# THE UNREFORMED HOUSE OF COMMONS

PARLIAMENTARY REPRESENTATION BEFORE 1832

BY

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VOLUME II

## SCOTLAND AND IRELAND

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# CONTENTS.

## PART V.

## THE SCOTCH PARLIAMENTARY SYSTEM.

### CHAPTER XXXI.



### CHAPTER XXXII.

## CHAPTER XXXIII.

### THE CONVENTION OF ROYAL BURGHS. 38–52.



## CHAPTER XXXIV.

### BURGH REPRESENTATION IN THE SCOTCH PARLIA[illegible] 53 72.



## CHAPTER XXXV.

### THE FRANCHISE IN THE COUNTIES. 73-91.

## CHAPTER XXXVI.



## CHAPTER XXXVII.



## CHAPTER XXXVIII.



## CHAPTER XXXIX.

# PART VI.

## PARLIAMENTARY REPRESENTATION IN IRELAND.

### CHAPTER XL.

#### INTRODUCTORY. 185-200.



### CHAPTER XLI.

#### COUNTY REPRESENTATION FROM THE REVOLUTION TO THE RE-ENFRANCHISEMENT OF THE ROMAN CATHOLICS. 201-217.

## CHAPTER XLII.

### THE FRANCHISE WITHHELD FROM THE ROMAN CATHOLICS. 218–231.



## CHAPTER XLIII.

### CATHOLIC ENFRANCHISEMENT. 232–289.



## CHAPTER XLIV.

### THE COUNTY FRANCHISE AT THE UNION. 290–294.

## CHAPTER XLV.



## CHAPTER XLVI.

## CHAPTER XLVIII.

### BOROUGHS AS PROPERTY. 357–366.



## CHAPTER XLIX.

### THE REPRESENTATION OF TRINITY COLLEGE. 367–374.



## CHAPTER L.

### DUBLIN AS A POLITICAL CAPITAL. 375–387.



## CHAPTER LI.

### THE ORGANISATION OF THE HOUSE OF COMMONS. 388–391.



## CHAPTER LII.

### THE SPEAKERSHIP. 392–403.

## CHAPTER LIII.

## CHAPTER LV.



## CHAPTER LVI.



## CHAPTER LVII.

## MAPS

# PART V.

## THE SCOTCH PARLIAMENTARY SYSTEM.

# CHAPTER XXXI.

## THE POLITICAL CONDITION OF SCOTLAND AFTER THE UNION.

English and Scotch Systems contrasted.

BETWEEN the representative system in England and that in Wales, from 1535 to 1832, there were many points of similarity. In Wales, as in England, county members were elected on the forty-shilling franchise; and in the Welsh boroughs there was much similarity to the householder franchises in the English boroughs. Between the representative system in England and that which existed in Scotland from the Union to 1832 there was no such similarity. In the electoral systems of England, of Wales, and of Ireland, there was much of the popular element, especially in the counties and in the larger borough constituencies. In the Scotch system the popular element was lacking; and from the Union until 1832 a single by-election in an inhabitant householder constituency, such as Westminster, or in a freeman and freeholder constituency, such as Nottingham, took more electors to the poll than could go to poll in Scotland when the whole of its forty-five members were being chosen at a general election. As has been conceded by Innes, the historian of the Scotch Parliament, conditions in Scotland prior to the Union "were most unfavourable to the growth of a sound representative system[1]"; and from the Union until 1832 there was no change for the better in Scotland so far as the representative system was concerned.

Political Servility of Scotland.

How strikingly different was the electoral system of Scotland from that of England, and how slightly the forty-five members from Scotland represented the people of Scotland, may be judged from appreciations of the Scotch system made by Tories on the one hand, like the Earl of Liverpool and Sir Walter Scott, and from characterisations by Whigs like Charles James Fox, and by Scotch

[1] Cosmo Innes, *Acts of Parliament of Scotland*, I. xii.

Radicals like James Thomson Callender, on the other. Lord Liverpool was wont to describe Scotland as "the best conditioned country in the world[1]." Scott, when the Russian Prince Davidoff was his visitor at Abbotsford in 1826, carried the young prince and his tutor to Selkirk "to see our quiet way of managing the choice of a national representative[2]." This was the Tory view of Scotland and the Tory appreciation of the political servility for which Scotland was notorious from the time when it came into the Union. This servility was due to the limited number of electors, coupled with the adroit management of Scotch elections by a line of political managers.

The Scotch political managers began with the Earl of Cromartie on the eve of the Union, and the Duke of Queensberry in the years immediately following the Union. Next came the Earl of Islay, afterwards Duke of Argyll. Later on, came James Stuart Mackenzie; and the line ended with Lord Melville, better known in Parliamentary history as Henry Dundas, whose son was his only successor[3], for under his management from 1811 to 1827 the system crumbled away. Dundas, in describing in 1789 his peculiar life-work to one of his political intimates, declared "that a variety of circumstances happen to concur in my person to render me a cement of political strength to the present administration, which, if once dissolved, would produce very ruinous effects[4]." Cement of the kind suggested by the most notorious of Scotch election managers had held the Scotch members together from their first appearance at Westminster. Every man in the House of Commons, and every student of Scotch politics and of the working of the representative system in Scotland, knew of the cement which was so largely and continuously used by Scotch political managers from Queensberry to Dundas. They knew of its effect on the Scotch members, the Scotch constituencies, and the civil service, not only of Great Britain, but of the Empire; for the home, the Indian and the colonial civil services with their prizes were component parts of that cement which, during the thirty years' rule of Dundas, held the forty-five members from Scotland together, and made them always ready to vote as Dundas directed.

Callender, who had lived in Edinburgh, and may not inaptly be termed a Radical—for, apart from his political bent as a Parliamentary reformer, he had some of the qualities which made many eighteenth century Radicals distrusted—evidently understood the Scotch electoral system and its working. He affirmed in his pamphlet "that an equal number of elbow chairs, placed once for all on the ministerial benches, would be less expensive to Government, and just about as manageable" as the forty-five members who were returned to the House of Commons from the country north of the Tweed[1]. Callender first published his pamphlet in 1792. Soon afterwards he was compelled to leave Edinburgh for the United States, to escape a prosecution for the opinions to which he had given expression. There, of all the foreigners who were connected with American journalism at the beginning of the nineteenth century, Callender was "easily first in the worst qualities of mind and character[2]." So true was this, that Callender's flight from Edinburgh must have been a distinct gain to the movement for Parliamentary reform, which in Scotland as in England, at this time and at later periods, was much retarded by men of the Callender type, and their prominent and active association with it. Unscrupulous as Mr Worthington C. Ford's sketch of Callender shows him to have been, Callender was not without insight and discernment, and his characterisation of 1792 was an apt and truthful picture of Scotch representation from the Union until 1832.

A Radical Characterisation.

Three years later Fox, in the House of Commons, used even stronger language than that of Callender. "When we look to the kingdom of Scotland," said Fox in the debate on Grey's motion in the Commons, in 1795, "we see a state of representation so monstrous and absurd, so ridiculous and so revolting, that it is good for nothing except perhaps to be placed by the side of the English, in order to set off our defective system by the comparison of one still more defective. In Scotland there is no shadow even of representation. There is neither a representation of property for the counties, nor of population for the towns[3]."

Fox on the Scotch System.

From Lord Liverpool and Scott, both of whom derived political

The Misrepresentation of Scotland.

[1] J. T. Callender, *The Political Progress of Britain*, 9, Philadelphia Edition, 1895.

[2] W. C. Ford, *Thomas Jefferson and James Thomson Callender*, 3.

[3] *Parl. Hist.*, xxxiii. 730.

and official advantage[1] from "the best conditioned country in the world," and from Fox and Callender, who each in his way was working for reform, we obtain a complete and correct picture of the representative system of Scotland. Taken together, these four characterisations form a graphic picture of Scotland during the century that followed the Union, when, except for spasmodic outbursts like that aroused by the malt tax in 1713 and that following the Porteous riots in 1736, it had no political life[2]. During these years Scotland afforded "one of the very few instances in history of a nation whose political representation was so grossly defective, as not merely to distort, but absolutely to conceal its opinions," and "it was habitually looked upon as the most servile and corrupt portion of the British Empire[3]."

Achievements of the Scotch Parliament.

Before Scotland came into the Union, its Parliament had established an excellent system of poor law. It had provided an effectual remedy against the evils of arbitrary or illegal imprisonment. It had established a complete and universal system of public instruction; introduced a humane but effective system of criminal law; awarded to all prisoners the right of being defended by counsel; provided for the protection of the poor in litigation against the rich; laid the foundation of a system of banking; afforded a humane relief to insolvent debtors; given absolute security to the cultivators of the soil in the enjoyment of their leasehold rights; prevented the oppression of husbandmen by the exactions of middlemen, or the distraining for more than their own rent by the owners of the soil; established a universal system of registration for all titles and mortgages relating to real property; and brought cheap justice home to every man's door by a system of local courts. In short, to quote the words of Alison, from whose enumeration of the measures passed by the Scotch Parliament the foregoing summary has been made, "the wisdom and public spirit of the Scottish Parliament, anterior to the Union, had not only procured for the people of Scotland all the elements of real freedom, but had effected a settlement, on the most secure and equitable basis, of all the great questions which it is the professed object of the Liberal Party to resolve in a satisfactory manner at this time (1834)[4]."

[1] Cf. Lockhart, *Life of Sir Walter Scott*, 85, Chandos Edition.

[2] Cf. Omond, *Lord Advocates*, II. 90.

[3] Lecky, *England in the Eighteenth Century*, III. 578, 579.

[4] Alison, "The Old Scotch Parliament," *Blackwood's Magazine*, November, 1834, 669, 670.

Scotland and Westminster.

In the century which followed the Union Scotland consequently stood in need of but little constructive legislation from the Parliament at Westminster. The aim of the Scotch members, so far as their own country was concerned, was to see that Scotland contributed as little as possible to Imperial taxation. They acted together from as early as 1708–9, when the votes of the forty-five members from Scotland determined the result of many controverted elections; and when, although acting in most of these contests with the Whigs, they joined forces with the Tories to throw out Sir Henry Dutton Colt, whose election had been controverted, and who had offended the Scotch members by a sneer at the people of Scotland during the debates on the Union[1].

The First Members at Westminster.

The first forty-five members from Scotland were not elected by the Scotch constituencies. The members of the last Scotch Parliament chose the delegation to Westminster from among their own number. The advocates of union had manœuvred to prevent an election in 1707, because it was felt to be of the utmost importance that "the first set of the two Houses of the first Parliament of Great Britain be of unquestionable friends both to the Revolution settlement and to the union of both kingdoms, which could not be made sure on the part of Scotland" but by this method of choice[2]. The author of this statement, although of the squadron opposed to Queensberry's management and measures[3], strongly supported the Union. He left among his papers another statement which shows that out of the forty-five members chosen to the first Parliament of Great Britain eighteen were under influence; while of the sixteen representative peers thirteen were also subject to influence[4]. As early as 1711 all the Scotch members were evidently whipped up as a body by the administration; and in this year the opening of Parliament was delayed, "most people think," wrote Lady Stratford to Earl Stratford, "because the Scotch members are not yet come up, and they are all of the court party[5]."

The Lord Advocate.

Thereafter the Scotch members acted so long and constantly together in support of Government, that, in the closing years of the eighteenth century, it is on record that one of them complained

[1] Cf. Mackinnon, *Union of England and Scotland*, 372; Vernon, *Correspondence*, I. 268.

[2] *Marchmont Papers*, III. 318.

[3] *Marchmont Papers*, III. 328.

[4] Cf. *Marchmont Papers*, III. 449, 451.

[5] *Wentworth Papers*, 215, 216.

of the stature of Dundas, because he was not sufficiently tall to be seen from all parts of the House, and to enable the forty-five members from Scotland to know at a glance how he desired that they should vote. "The Government," Ferguson of Pitfour used to insist, "ought always to select a tall man to fill the office of Lord Advocate." "We Scotch members," he said, "always vote with the Lord Advocate, and we therefore require to see him in a division. Now I can see Mr Pitt, and I can see Mr Addington, but I cannot see the Lord Advocate[1]." It was this same member, Ferguson of Pitfour, who in his old age was fond of gathering young members of Parliament at his table, and of giving them the benefit of his Parliamentary experience. This advice he was accustomed to sum up in the axiomatic sentences: "I was never present at any debate I could avoid, or absent from any division I could get at." "I have heard many arguments which convinced my judgement, but never one which influenced my vote." "I never voted but once according to my own opinions, and that was the worst vote I ever gave." "I found that the only way to be quiet in Parliament was always to vote with the ministers, and never take a place[2]."

Scotch Members and Office.

Ferguson of Pitfour was typical of Scotch members from the Union until 1832, except in one point. Many of his predecessors from Scotland, many of his contemporaries in the Commons from 1788 to 1807, when he was of the House, and many of those who came after him, had other views as to office. The views of these men were not unlike those to which Andrew Mitchell gave expression in a letter written in April, 1747, on the eve of his contest for Aberdeenshire. "My views," wrote Mitchell, who was the son of a minister of St Giles's, Edinburgh, and at this time was at the English bar, "I confess to you, are neither so honest nor so disinterested as they have been. I desire, nay I am resolved, to act a fair and honourable part if ever I shall be in Parliament; but I do propose a reward for myself; that of being employed either at home or abroad, in a station agreeable to me, and in which I may be useful; for my ambition at present is stronger than my avarice[3]." In the same letter this young Scotchman, still seeking his fortune at the bar in England, dwelt on the

[1] Pellew, *Life of Lord Sidmouth*, I. 153.

[2] H. C. Robinson, *Diary and Reminiscences*, II. 34.

[3] Bisset, *Memoirs and Papers of Sir Andrew Mitchell*, 50, 51.

little faith to be put in the promises of Government and of men in office. "The only way therefore to fix them," he wrote, "is to be in a situation to serve or hurt them"; and for this reason Mitchell was anxious to be elected for Aberdeenshire.

Effect on Scotch Society.

Two or three years before Mitchell wrote this letter there was published anonymously in Edinburgh a book entitled *The Present State of Scotland Consider'd*, which affords proof that the point of view from which Mitchell regarded a seat in the House of Commons was common among Scotland's Parliamentary representatives. The author regretted the time when the whole of the Scotch nobility and gentry, with the exception of a few who had places at Court, lived within the nation and spent their money in it. He attributed the new order of things, the extravagance and debt of the gentry, to the Scotch members, who had been "an unhappy mean" of introducing into Scotland the extravagance he deplored. Scotchmen who went to London to attend the Parliament had, he complained, been "tempted to ape the English, not adverting to the great disproportion between the Scots and English fortunes"; and they not only thus squandered their own estates, but set an example which "tempted many of their countrymen and friends to do so"; and "so luxury and extravagance have been introduced into the nation." "'Tis true," continued the moralist, "our members of Parliament have posts and pensions to support their expense at London, and therefore it may be said that what they spend in England is not drawn from Scotland. But not to mention the dust that is thrown against them by some furious patriots, that these posts and pensions are given for no onerous cause, money which comes in this dirty channel seldom lasts. It is generally thrown away as fast as it is got, and becomes only fuel to foment more the demands of luxury, which consumes both these gentlemen's rents from Scotland and this the reward to the bargain. However this may be, it must be owned that our great men and members of Parliament generally are tempted to outrun their incomes, as hoping to make up what they every year sink out of their estates out of the profits of some imaginary future place or project[1]."

Effect on the Electorate.

Twenty years before the publication of *The Present State of Scotland Consider'd* another keen observer of the trend of events in

[1] *The Present State of Scotland Consider'd*, printed by W. and T. Ruddimans, Edinburgh, 1745.

that country had recorded his impressions of the working of the political system which had been established at the Union, and of the mercenary character of Scotland's representatives at Westminster. "It's scarce conceivable," wrote Wodrow in 1725, in reference to Walpole's management of the House of Commons, and the part the Scotch members had in it, "how he gets money to serve all his purposes, and to keep up so many pensions and gifts as are going. I am told one of his methods is by subdividing the great and the most lucrative posts in the nation. They are given indeed to great men in name, but then what one man has in appearance is burdened with two or three more who are not known, save to him and the person who has the post[1]. What I am most grieved about, and cannot see where it will land in the issue, is the present state of our Parliament members, and the elections to them. All is carried on by money; and a man cannot be chosen unless he bestow five or six hundred guineas; and that must be repaid of somehow or other. Stanmore told my author he had spent five hundred guineas; and Colonel Douglas said to him, he had expended a thousand. All must have either a post or three or four hundred guineas, called travelling charges, up and down. This must in time make Parliaments mercenary and expose everything to the highest bidder, and we may be brought to anything, or rather sold to anybody who has money enough[2]."

English Jealousy of Scotch Office-holders.

In the eighteenth century the Scotch members of the House of Commons, even by their own countrymen and countrywomen, were likened to ostlers and postillions, "who have no wages, and must support themselves by vails[3]," the vails taking the form of places and pensions. This was so characteristic of the spirit in which Scotchmen went into the House of Commons, and Scotch eagerness for place was so greatly resented in England, that in 1761 it was proposed to Bute that a limit should be put to the number of Scotchmen in the public service[4]; while in 1766 subsidised newspaper writers, like Caleb Whitefoord, were endeavouring to persuade the public that the notion prevailing in England, that most places of trust and profit were engrossed by Scotchmen, was unfounded[5]. These efforts were unavailing. In 1770, at a meeting in Westminster Hall addressed by Wilkes and Alderman Sawbridge,

[1] Cf. *Marchmont Papers*, I. 222. [2] Wodrow, *Analecta*, III. 228, 229.
[3] Fitzgerald, *Life of James Boswell of Auchinleck*, I. 148.
[4] Dodington, *Diary*, I. 429.
[5] Cf. Hewins, *The Whitefoord Papers*, 1739–1810, Introd., xxiv.

one of the demands was that George III should dismiss "all his present ministers, and not admit a Scotchman into the administration[1]"; and in 1778 Wesley, always a steadfast friend of George III, records in his journal that for many years he had heard the King severely blamed for giving all places of trust and profit to Scotchmen[2].

Unpopularity of Scotch Members.

The prejudice against Scotch members, due to their interested support of Government, and to the offices which were bestowed so freely upon the representatives from Scotland and their few constituents, had much to do with the fact that from the Union to the reform of the House of Commons Scotland never gave the House either a Speaker or a leader in any political movement. Three times during the long reign of George III the election of a Scotchman to the Chair was mooted. In the first of these instances, in 1761, Mr Forester, the member suggested, was not of the forty-five from Scotland. He represented the borough of Dunwich. He was desirous to be Speaker; and approached the Duke of Bedford, through Rigby the Duke's borough manager, with a view to the support of the Duke, who was then Lord Keeper of the Privy Seal in the Newcastle administration. "I will tell you," wrote Bedford, "the objections which I think would be urged against you by those who are not your friends: which are, the short time you have sat in the House of Commons; your being a Scotchman; and your connection with the Tories. Don't think these objections would have much weight with me; but I am sure they would be made by others[3]."

Scotchmen and the Chair.

Sir John Cust at this time succeeded Onslow as Speaker, and nearly twenty years elapsed before it was again mooted that a Scotchman should be chosen to the Chair. This time again the Scotchman suggested, Sir Gilbert Eliot, was not a member for a Scotch constituency. He then sat for Helston. He was twice put forward for Speaker, and was anxious for some office[4]. But Scotland had not yet ceased to be the chief subject of public odium in England—a distinction held earlier in the eighteenth century by Hanover. The prejudice against Scotchmen was still so strong that Horace Walpole gave as a conclusive reason against Eliot's promotion in the House of Commons that "he was a

[1] *Annual Register*, 1770, p. 160.

[2] Cf. Wesley, *Journals*, May 7th, 1778.

[3] *Bedford Correspondence*, III. 54.

[4] *Eliot Correspondence*, I. 256.

Scot[1]"; and Scotland did not give a Speaker to the House until after the Reform of 1832, when in 1835, Abercromby, afterwards Lord Dunfermline, their member for Edinburgh, was elected as successor to Manners-Sutton, who had been Speaker since 1817[2].

Loyalty to Scotch Interests.

While, as a group, the members for Scotland may be said to have systematically supported Government from the Union until nearly the end of the old representative system, and to have been paid for this support—many of them in Walpole's time by wages, at the rate of ten guineas a week[3], and many all through the eighteenth century by offices for themselves, their dependents, or their constituents—they were ready, on occasion, to take a line of their own on strictly Scotch questions. From the first they held Government to the bargain that the proportion of the new taxation corresponding to that which in England went to pay the debt should be spent within Scotland, and they acquired "a reputation for securing to their country at least the full benefit to which it was equitably entitled." "Even from the negligence of English members as to the local affairs of the north," continues the historian of Scotland, who thus extolled the loyalty of the Scotch members to their country, "they gathered strength. In their persevering attendance and steady co-operation they had sometimes the votes of the House at their command; and under the aspect of being left alone to the management of their own national business, they took care that it should be transacted greatly to the national advantage[4]." There were other reasons for the persevering attendance of Scotch members; but whatever their motives may have been, they were always watchful and alert in the interests of Scotland; and unquestionably their "custom of conferring together on purely local matters, and of adopting a common line of policy with respect to them, gave the Scotch contingent at Westminster nearly all the weight of a national legislature[5]."

Acting on the Defensive.

They acted together on the malt tax in 1713; again, with success, in 1724 on the ale duty proposals[6]; and again, also with some success, when, in 1736, after the murder of Captain Porteous, Walpole's Government introduced a bill degrading the office of provost in Edinburgh, and otherwise penalising the city

[1] *Bedford Correspondence*, III. xxxii., xxxiii.
[2] Cf. Lummis, *The Speaker's Chair*, 158, 159.
[3] Cf. Mahon, II. 102; Caldwell, *Papers*, I. 243.
[4] Burton, *Hist. of Scotland*, VIII. 216, 217.
[5] Lecky, *England in the Eighteenth Century*, II. 82. [6] Mahon, II. 102.

for the uprising of the Porteous mob. As a poor country it was important to Scotland that taxation should not weigh too heavily; and the Scotch members, in spite of their servility under political managers from Queensberry to Dundas, were seldom neglectful of Scotch interests when measures for additional taxation were before the House of Commons. On such questions, as the Parliamentary records for 1713 and 1724 show, they acted together; as they also did, independently of Government, when there was an offender against Scotland to be punished. One of the very earliest records of their acting as a group and apart from the Government concerns the controverted election case of 1708, when Sir Henry Dutton Colt was punished for his sneering references to Scotchmen. Nearly half a century later the Scotch members again acted unitedly to punish Philip Anstruther, member for the Crail boroughs, the one member from Scotland who voted with Walpole at the time of the Porteous agitation, and who obtained a regiment as his price[1].

The Scotch Contingent in English History.

The effect upon the history of England, during the eighteenth century and the first quarter of the nineteenth, of the readiness of the forty-five members from Scotland to give their unquestioning and undivided support to the minister for the time being, always under the discipline of a Parliamentary manager, cannot be traced here. Parliamentary support so obtained had momentous effects on the policy of England towards the American colonies, and again on the war with France, which followed the French Revolution; and this support from Scotland unquestionably helped to give George III a larger measure of control over the House of Commons than had been directly exercised by any of his predecessors on the throne.

Scotchmen in the Colonial Service.

While not overlooking the evil effects which the political condition and the representative system of Scotland had on all the larger affairs of national life, one fact must not be ignored. It concerns the Empire as a whole. Scotland's representative system, utterly indefensible as it was, was chiefly, though indirectly, responsible for the extraordinarily large proportion of Scotchmen who, from the beginning of the reign of George III, if not from an earlier period, went out to hold official positions in India and the British colonies. This was particularly marked during the

[1] Cf. Lecky, *England in the Eighteenth Century*, II. 83; Beatson, I. 291.

thirty years that Dundas was the political manager of the Parliamentary constituencies beyond the Tweed.

Dundas and Patronage.

Dundas had the bestowal, at one time or another during the course of his long career, of naval, Indian, and colonial patronage, as well as of all the patronage of Scotland. In those days the East India Company had "more and greater places to give away than the first lord of the treasury[1]." But the patronage, whether of the navy, of the department of trade and plantations, or of the board of control for the affairs of India, was not sufficient for the claims on Dundas as political manager of Scotland. Much patronage as he usually had on hand, he was constantly alert to extend his lines, and to bring more spoils within his control[2]. In 1784 the Duke of Rutland was scarcely settled at Dublin Castle as Lord Lieutenant of Ireland before Dundas was seeking official openings in the interest of his corps of members from Scotland, or their constituents. Rutland was appointed Lord Lieutenant on February 11th, 1784. "Let me," wrote Dundas on March 21st, "recommend Mr Ross, son of Sir John Lockhart Ross, for promotion, if the request is not an improper one"; and again on November 26th, 1784, he applied to Rutland in the interest of his Scotch friends. "At the request of Lady Francis Douglas," he wrote, in this second letter to the Lord Lieutenant, "I am applying to you on behalf of her sister Mrs Wilson, who married an Irishman and disobliged all her friends. It is wished that something could be done by the Irish Government for him[3]."

His Protégés in India.

During the latter part of the rule of Dundas Scotchmen who owed their appointments directly to him were to be found in official positions in British possessions as remote as Botany Bay[4]. But it was to India that there went in largest number the Scotch protégés of Dundas—the sons and nephews of the members of his corps of forty-five in the House of Commons, and of the county and borough electors who voted for these members. Young Scotchmen from these families had been going abroad before the author of *The Present State of Scotland Consider'd* uttered his anonymous lament over the social degeneration of the landed gentry of North Britain. "Many gentlemen's children," he wrote in 1745, "for want of patrimonies are exported as so much lumber off the

[1] Walpole, *Letters to Mann*, v. 177. [2] Cf. Rosebery, *Pitt*, 67.
[3] *Hist. MSS. Comm. 14th Rep.*, App., pt. I., vol. III. 81, 151.
[4] Cf. Wilberforce, *Correspondence*, I. 90.

country; and those who stay at home, for want of beneficial trade and manufactures, remain an idle burden upon their parents[1]."

English and Scotch Office Seekers.

Englishmen competed with Scotchmen for official positions; but England never had a political manager like Dundas. It had no man who, for a generation, was so near to all the electors and so accessible to them all as was Dundas from the time when he became Lord Advocate in 1775 until his downfall in 1806. Dundas had to manage an electorate very different from that with which many of the unofficial borough managers in England had to deal. Though there was no lack of conviviality at Scotch elections, no sparing of strong brandy and claret[2], beer and treating and small money bribes were never general in Scotland. I can find no traces in Scotland of beer and treating being used in the way that these bribes were employed in numerous English borough constituencies; and in view of the character of the Scotch electorates, there could have been little play for the more squalid methods in vogue in popular constituencies in England. Quite another currency was needed in Scotland, especially in dealing with the holders of superiorities, who formed the limited electorates in the counties. Offices and pensions, but mostly offices, were the currency which swayed Scotch elections from the Union until 1832; and Dundas, from the day when he took charge of the political management of Scotland, was always striving to add to the sum of this currency at his command. As a result of the difference between the representative system in Scotland and that in England, and of the fact that one man was in control of the political management of Scotland, in the competition between Englishmen and Scotchmen for places in the Indian and colonial service Scotchmen generally had the best of it; and in proportion to population, Scotland obtained an unduly large share of these official appointments.

Individual Relations with Electors.

Electors in Scotland were so few that members of Parliament were usually on calling terms with them all. It was customary after a county election for the new member to make a round of calls, to return thanks personally to the holders of superiorities who had voted for him[3]. Nor was this social duty towards the electors burdensome; for in 1788 the county electors ranged in

[1] *The Present State of Scotland Consider'd*, 35. [2] Cf. Omond, II. 9.

[3] Cf. Bisset, *Memoirs of Sir Andrew Mitchell*, I. 64; *Memoirs of Sir James Campbell of Ardkinglas*, I. 337; Dunbar, *Social Life in Former Days*, 219.

number from twelve in Bute to two hundred and five in Ayr; and the average was only fractionally over eighty for each of the thirty-three counties of Scotland[1]. Under these conditions every elector had easy access to the ear of Dundas, and could quickly reach the source from which Indian, colonial, and other official patronage flowed. Of a large part of the county electorate of Scotland, Dundas during his long career had personal knowledge. With many he established intimate relationships[2]; and his contemporary, the Earl of Minto, is the authority for the statement that "there was scarce a gentleman's family in Scotland, of whatever politics, which had not at some time and in some one of its members received some Indian appointment or other act of, in many cases, quite disinterested kindness from Henry Dundas[3]."

Scotch Capacity in Office.

The social, economic, and industrial conditions of Scotland during the seventy years which preceded the Reform Act of 1832, and especially the educational system, on which Alison lays stress in his survey of the work of the old Scotch Parliament, all combined to produce excellent candidates for the Indian and colonial appointments which were in the bestowal of Dundas. While, as has been said, the old representative system of Scotland is indefensible, and while it helped George III to an unconstitutional control of the House of Commons, and to results not for the good of national life, it has to be placed to the credit of the old Scotch system of representation, and to its manipulation by Dundas, that it gave Great Britain a long line of Indian and colonial administrators, whose names will ever stand out in the history of the period when the British Empire was in making. "It has been the good fortune of the Scotlish people of the cultured class," wrote Sir Wemyss Reid in 1899, "for many generations to furnish a liberal supply of recruits to these three branches of the public service [army, navy, and East India], and more particularly to the last named. Students of Indian history know how the names of Scotsmen abound in every department of the administration of India during the last hundred years. And Scotland has no reason to feel ashamed of the records which these sons of hers have left behind them. Somehow or other they

[1] Cf. Adam, *View of the Political State of Scotland in the Last Century*, xxxii.

[2] Cockburn, *Life of Lord Jeffrey*, 64.

[3] Stanhope, *Life of Pitt*, I. 310, 311; cf. Omond, II. 154; Gabrielle Festing, *John Hookham Frere and His Friends*, 125.

seem to have possessed in a peculiar degree the qualities which are of the greatest value in the man who undertakes the duties of the public service. Caution combined with enthusiasm, shrewdness of judgment allied to steadfastness of purpose, great powers of work, simplicity of life, a natural frugality, and above all an unassailable devotion and loyalty, these seem to be the qualities which may be confidently looked for in that order of Scotsmen to whom the service of our country has owed so much[1]."

Estimates of Dundas.

Excepting Boswell's ill-natured sketch of Dundas—written in 1775, when Dundas became Lord Advocate, and in which Boswell, who was obviously jealous of him, described him as "a coarse, unlettered, unfanciful dog[2]"—contemporary estimates of Dundas, whether by his associates or by those who were politically opposed to him, uniformly agree in depicting him as possessing all the qualities, particularly the social qualities, necessary to a successful political manager. Brougham, who was politically opposed to Dundas, and who knew the Edinburgh of the period when to be opposed to Dundas meant social and professional ostracism, describes him as "in his demeanour, hearty and good-humoured to all[3]." Wraxall writes of Dundas that "the lineaments of his countenance, open as well as gay, facilitated his objects[4]." Cockburn, who knew the Edinburgh of the days of Dundas better even than Brougham, and who knew the heavy hand that Dundas could lay on those who opposed him, describes him as "well calculated by talents and manner to make despotism popular"; as "the absolute dictator of Scotland"; and as possessing "the means of rewarding submission and of suppressing opposition beyond what were ever exercised in modern times by one person in any portion of the Empire." "A country gentleman with any public principle except devotion to Dundas," continues Cockburn, in his description of the political condition of Scotland from 1780 to 1803, and particularly of the Scotland of the years immediately following the French Revolution, "was viewed as a wonder or rather as a monster. This was the creed also of almost all our merchants, all our removable office-holders, and all our public corporations[5]."

[1] Reid, *Memoirs and Correspondence of Lord Playfair*, 2, 3.
[2] James Boswell, *Letters*, 195, 196.
[3] Brougham, *English Statesmen*, 1st Series, II. 230.
[4] Wraxall, *Posthumous Memoirs*, I. 166.
[5] Cockburn, *Memorials*, 87, 88.

Loyalty of Edinburgh to Dundas.

How generally this was the creed of Edinburgh was shown by the jubilation of the Tories there when, in 1806, the impeachment of Dundas, then Lord Melville, broke down. Even Melville's partisans admitted that the investigation brought out many circumstances by no means creditable to his discretion[1]. But these were all ignored by Melville's Edinburgh friends, and did not prevent Scott from inditing the song "Health to Lord Melville," which, to quote Lockhart, "was sung by James Ballantyne, and received with clamorous applause" at a public dinner in honour of Melville's acquittal, on the 27th of June, 1806[2]. Scott, if Dugald Stewart's report of this Edinburgh banquet is to be accepted as correct, wrote two songs in honour of Melville. "There was," wrote Stewart, "another written by him and sung likewise; but he seems to have taken fright about it, for he won't give any copies. The chorus was 'Since Melville's got justice, may the Devil take Law.' The applause that followed the song was so great that it was a quarter of an hour before silence could be restored. The Justice Clerk and most of the judges were present, all the barons of the Exchequer, all the commissioners, all the board of customs, and most of the excise."

Cockburn on Dundas.

Intimately as Cockburn knew the Scotland that Dundas ruled, and earnestly and disinterestedly as he worked for the reform of the representative system, he was nevertheless an admirer of the last of the great political managers of Scotland. "He was," Cockburn writes, "the very man for Scotland at that time; and is a Scotchman of whom his country may be proud. Skilful in Parliament, wise and liberal in council, and with an almost unrivalled power of administration, the usual reproach of his Scotch management is removed by the two facts, that he did not make the bad elements he had to work with, and that he did not abuse them, which last is the greatest praise that his situation admits of[3]."

Political Conditions in the Time of Dundas.

Dundas was so much the embodiment of the representative system in Scotland at the time when the movement for Parliamentary reform became general, that it has been deemed well to give the foregoing sketch of the political Scotland he ruled, before describing in detail the representative system as it was developed in Scotland before the Union, and as it existed from

[1] Cf. Lockhart, *Life of Scott*, 132. [2] Lockhart, *Life of Scott*, 132.

[3] Cockburn, *Memorials*, 67. Cf. Craik, *A Century of Scotch History*, II. 63, 95.

1707 to 1832. Lord Cockburn, who knew the system intimately, stated only what was true when he declared that Dundas "did not make the bad elements he had to work with." They dated from the Union; and from the Union they had been used by one political manager or another until Dundas took charge, and so manipulated them that the shires and groups of boroughs returning the forty-five members to the House of Commons were practically so many nomination seats under the control of the Government.

Conditions dating from the Union.

The anomalies of the English borough representation, which permitted many boroughs to come directly or indirectly under the control of Government, were due to varying local usages; to royal charters, which placed municipal corporations in control of Parliamentary elections; and to a long series of Parliamentary determinations of controverted elections. Between 1707 and 1832 no such influences were at work on the representative system of Scotland; and when Parliament approached the reform of the electoral systems of England, Wales, Scotland, and Ireland in 1831, that of Scotland stood, in all its essentials, as it did when Scotland came into the Union. It took centuries of social and economic change and of interested usurpation of the popular right to the Parliamentary franchise, to bring the boroughs in England into the condition which made it possible for patrons to control so many of them in the seventeenth century, and still more of them in the eighteenth and nineteenth centuries. Scotland came into the Union with county and borough constituencies so constituted that it needed only an Islay or a Dundas as political manager, and a Walpole as minister, or a sovereign bent on the control of the House of Commons, like George III, to reduce all the Scotch constituencies to the position of the English nomination boroughs.

An Easy Field for a Political Manager.

Had Dundas been alive at the time of the Union, had he been in supreme control of all the negotiations and arrangements leading up to Scotland's inclusion in the Parliamentary system of Great Britain, he could not have devised a system of representation more readily and completely lending itself to the ends which he had in view during the thirty years when "his business consisted in laying forty-five Scotch members at the feet of Government," when he was "the Pharos of Scotland," and when "who steered upon him was safe, who disregarded his light was wrecked[1]." The small

[1] Cockburn, *Life of Lord Jeffrey*, 64.

county electorates, in which there is reason to believe the faggot voter was already established[1], and the groups of boroughs with municipal corporations already in possession of the right of election, from the day when Scotland first came into the Union afforded a field which such a politician would positively delight to work.

How the Field was worked.

From the Union Scotland was a comparatively easy field for a political manager who had pensions and official patronage at his disposal. It must have become easier to work after the Septennial Act of 1715, and increasingly so as Britain's Indian and colonial possessions opened new avenues to coveted official appointments. No political manager could make any headway unless he had favours to bestow, and means to hand of punishing or suppressing those who would not fall in with his schemes. Electors in Scotland were so few that from the early years of the Union its political managers were in a position to serve or hurt every elector. The overwhelming majority of the electors were willing to be served[2]. They were ready to pay the price demanded for service as the recurring Parliamentary elections came round; and they never looked beyond the candidate or the political manager who sought their suffrages, and who, as was the case with Dundas, came to know the circumstances and the wants, and the proper bait of every one of his countrymen who had a vote at a Parliamentary election[3].

Comparison with England.

Such knowledge was essential to those who essayed any political management of Scotland; and to this fact students of the representative system of that country owe a detailed and valuable contemporary description of the Scotch county constituencies as they were when Dundas was in control. In 1788 William Adam and Henry Erskine were contemplating the management of the interests of the Whig opposition in Scotland to the administration of Pitt and Dundas. *The View of the Political State of Scotland in the Last Century*, edited by Sir Charles Elphinstone Adam of Blair-Adam, and published in 1887, was, as its title-page sets out, "a confidential report on the political opinions, family connections, or personal circumstances of the two thousand six hundred and sixty-two county voters in 1788." It is a compilation full of interest from the light which it throws upon political, official, and

[1] Cf. *Somers Tracts*, XII. 627, 628.

[2] Cf. Omond, *Lord Advocates of Scotland*, II. 90.

[3] Cf. Cockburn, *Life of Lord Jeffrey*, 64.

social life in Scotland. It could never have had a counterpart in England; where the representative system was entirely different, and where in most counties, instead of the electors being numbered by tens and twenties, as they were in Scotland, they were numbered by thousands and could never have been humoured and favoured, as were the county electors in Scotland, by a single political organiser working in the interests of the Government. Members for the English counties were always the most independent element in the House of Commons; and although some English counties were controlled by territorial families, county elections in England were never marked by the bribery which characterised borough elections; whilst among county electors in England there was distributed but little of the official patronage which formed the rewards by which the county electors in Scotland, from the Union until 1832, were attached to the fortunes of political managers like Dundas.

# CHAPTER XXXII.

## THE SETTLEMENT OF THE REPRESENTATION AT THE UNION.

Proceedings at the Union.

At the Union, so far as can be followed in the official reports of the proceedings of the lords commissioners, the discussions as to representation turned entirely on the number of members to be assigned to Scotland in the united Parliament. Scores of other questions, ranging from the equivalent which was to go to Scotland when new taxation was levied to the conjoining of the crosses of St Andrew and St George when used on flags, banners, standards, and ensigns of the United Kingdom, were discussed with much patience and detail. But there are no official records of discussions by the lords commissioners as to the franchises on which Scotland's representatives in the House of Commons at Westminster were to be elected. When Wales came into the representative system in 1535 its position was altogether unlike that of Scotland on the eve of the Union. Wales, prior to 1535, had had no representative system; and the Act of Henry VIII enfranchising Wales not only determined the number of members to be sent from the Principality and the constituencies from which they were to be elected, but of necessity created the electoral system on which these members were to be returned.

Constitution of the Scotch Parliament.

At the time when Scotland came into the Union it had a Parliament in which there were three estates—the nobility, the commissioners from the shires, and the commissioners from the royal burghs. In the Parliament which passed the Act of Union the first estate was composed of three dukes, three marquesses, forty-one earls, four viscounts, and twenty-one lords. The second estate, usually described as the barons, was composed of eighty-three commissioners from the thirty-three shires; while the third estate was composed of two commissioners from Edinburgh, and one from each of the other sixty-five burghs. In addition to these

two groups of representatives who were not of the nobility there were in the Parliament of 1706—the Lord Register, the Lord Advocate, and Lord Justice Clerk, lesser officials of State, who, as such, had voice and vote in the old Scotch Parliament[1]. To the Parliament so constituted was left, in accordance with the Articles of Union, the determining of the new Scotch constituencies, and of the franchises on which Scotland's representatives in the Parliament of the United Kingdom were to be elected.

Settlement of the Franchise.

In view of the time which was occupied by the lords commissioners in coming to an agreement as to how many members Scotland should have in the Parliament at Westminster, it is remarkable that so little should have been said, or rather that so little appears on the minutes, as to the mode in which the members from Scotland were to be elected. All that appears is contained in one brief paragraph, by virtue of which, when embodied in the Articles of Union, the Parliament of Scotland made the series of determinations which settled the county and borough franchises from 1707 until the Reform Act for Scotland was passed in 1832. The proposal as to the method of settlement came from the Scotch commissioners, and, so far as the official record shows, was accepted by the English commissioners without question. "The lords commissioners for Scotland," it reads, "do also propose that, upon calling the first Parliament of Great Britain, and until the said Parliament shall make further provision therein, the following method be used in summoning the members from Scotland to attend in both Houses of Parliament of Great Britain, viz.: That a writ under the Great Seal of the United Kingdom be issued out for summoning the said members, and that the said writ be directed to such court, officer, or office, and be executed in such manner as in the Parliament of Scotland shall be settled, at or before ratifying the treaty[2]." The proposal from the Scotch lords commissioners was submitted to the English commissioners on the 28th of June, 1706. It was formally accepted by them on the 3rd of July; and the English commissioners then proposed that the writs should go to the Privy Council of Scotland, instead of to such court, officer, or office, as should be settled by the Parliament of Scotland; and on the 4th of July the Scotch commissioners agreed to this amendment.

[1] *Acts of the Scotch Parliaments*, XI. 207, 302.

[2] *Acts of the Scotch Parliaments*, XI., App., 185.

Fixing the Number of Scotch Members.

The Scotch proposal that the Scotch Parliament should determine how the writs should be executed came after the agreement as to the number of representatives which Scotland should elect to the Parliament of the United Kingdom. The first formal proposal as to the Scotch representatives came from the English commissioners. It was submitted on the 7th of June, and was that Scotland's representation should consist of thirty-eight members. The Scotch commissioners demurred to this number as inadequate. Hitherto all communications had been in writing, but on this question the Scotch commissioners asked for a conference. They handed in their demurrer and their request for a conference on the 11th of June. They had "found such difficulties in that matter that," to quote their statement, "they are under the necessity to propose a conference betwixt the lords commissioners for the kingdoms on that subject, in which their lordships doubt not but to satisfy the lords commissioners for England that a greater number than is mentioned in the said proposal will be necessary for attaining the happy Union of the two kingdoms so much desired on both sides[1]."

Difficulties from English Inequalities.

Outside the Cockpit at Whitehall, where the commissioners for the Union carried on their negotiations, there was much discussion on the number of members to which Scotland was entitled; and from the anti-Union pamphleteers there was strenuous opposition to the acceptance of any scheme under which Scotland might be inadequately represented. This discussion, and the subsequent discussions in the English Parliament on the Act of Union, are not only interesting from their connection with the determination of the quota of members from Scotland, but also as affording proof that the inequalities of the English representative system were discussed at this early period of the eighteenth century. Incidentally also these discussions in and out of Parliament are significant as suggesting one reason why the English lords commissioners so readily acceded to the proposal of the Scotch commissioners that it should be left exclusively to the Scotch Parliament to determine the franchises on which Scotland's members should be chosen. Outside Parliament the contribution to this discussion made by Hodges, one of the anti-Union pamphleteers, who argued with Defoe, is noteworthy from these points of view—from the fact that he opposed a too small representation of Scotland, and that he raised the question of Parliamentary reform in England. Hodges

[1] *Acts of the Scotch Parliaments*, XI., App., 187.

complained of the injustice of reducing the Parliamentary representation of Scotland "to one third, while retaining the Parliament of England intact." "If taxation is to be the standard of calculation," he asked, "how explain the inequality in England itself, where one county, which pays little to the revenue, is over-represented; while another, paying twenty or thirty per cent. more, is hardly represented at all? In Scotland, there are sixty royal burghs[1], with the right of separate representation. But many of these will be deprived of their rights; while England does not disfranchise one, though it may not contain a dozen freeholds."

Representation and Tax Payments.

Strictures on the representation of Cornwall, and pointed allusions to the Old Sarums and Gattons, were not confined to the pamphleteers of the Union controversy. The inequalities of the English system were recalled when the bill for the Union reached the House of Lords. There, in view of the number of representatives assigned to Scotland by the articles of Union, exception was taken to the comparatively small contribution that Scotland was to make to the land tax. Halifax, who was one of the English lords commissioners, was ready with a reply based on Cornwall's representation in the House of Commons compared with its contribution to national taxation. "In fixing taxation," he said, "the number of representatives is no rule to go by. Why even now in England there is the county of Cornwall that pays not nearly so much towards the land tax as the county of Gloucester, and yet sends to Parliament almost five times as many members[2]."

Scotland obtains Forty-five Members.

The conference sought by the Scotch lords commissioners took place on the 12th of June. The Scotch appeal for a larger representation was not at once acceded to; and on the 14th of June the Scotch lords commissioners, through the Earl of Mar, reported that they found themselves "still under an absolute necessity for bringing to a happy conclusion the Union of the two kingdoms, to insist that a greater number than that of thirty-eight be agreed to as the representatives for Scotland in the House of Commons in the Parliament of Great Britain[3]." Their persistence gained for them their point. On the 15th of June the English commissioners submitted a new and more favourable proposal. "The lords commissioners for England," it read, "being assured

[1] The actual number at the time of the Union was sixty-six.

[2] Stanhope, *Reign of Queen Anne*, I. 308, 309.

[3] *Acts of the Scotch Parliaments*, XI., App., 179.

by the lords commissioners for Scotland that there will be found insuperable difficulties in reducing the representation of Scotland in the House of Commons of the United Kingdom to thirty-eight members, the number formerly proposed by the lords commissioners for England, do, to show their inclinations to remove everything that would of necessity be an obstruction to perfecting the Union of the two kingdoms, propose to the lords commissioners for Scotland that forty-five members, and no more, be the number of the representatives for that part of the United Kingdom now called Scotland, in the House of Commons of the United Kingdom after the intended Union." Three days later the Scotch commissioners reported that they did not "insist for greater number"; and forty-five was fixed as Scotland's quota by the articles of Union[1].

Avoiding the Discussion of Parliamentary Reform.

Between the abdication of James II and the death of William III there had been agitations for electoral reform both in England and in Scotland. In England the agitation had produced no result. In Scotland it had led to an addition in 1690 of twenty-six to the number of commissioners returned by the shires[2]. The English lords commissioners for the Union with Scotland must have been aware that in 1706–7 the question of the representative system had only to be mooted to give rise to an agitation, and that any discussion as to the Parliamentary franchise in Scotland would raise the question of the inequalities of the English representative system. They had no desire to raise this question; and it may have been with a view to preventing any controversy on the subject, as well as with the intention of conciliating the Scotch lords commissioners and the Scotch Parliament, that they were so ready to leave the question of the Scotch franchises to the Parliament in Edinburgh. At the Revolution the question of electoral reform had been raised in Scotland; and within two years after the Union there were attempts to widen the county franchise. At the election for the County of Perth in 1709 a candidate and his agent "brought a great number of gentlemen who till then never claimed a right to vote, and who by the laws of Scotland had no such right[3]." The Scotch lords commissioners may therefore also have been unwilling to raise extra-Parliamentary discussion on the question of the electoral franchises of their country; and when it is remembered that the Scotch Parliament for generations before

[1] *Acts of the Scotch Parliaments*, XI., App., 180.
[2] Cf. *Acts of the Scotch Parliaments*, IX. 152.
[3] *H. of C. Journals*, XVI. 227.

the Union had been systematically and continuously managed on behalf of the Crown, there is good ground for the belief that among the Scotch lords commissioners there were those who desired that the old system of representation should be interfered with as little as possible.

Subserviency of the Scotch Parliament.

The committee of the Scotch Parliament, called the Committee of Articles, which dated from the Parliament held at Perth in 1368[1], had survived until the Revolution. The election of this committee from the three estates had always been a subject of close interest to the Crown; "and in the later and worse times of the Scotch constitution," according to Cosmo Innes, "the devices of the politician threw it entirely into the hands of Government[2]." "James VI," writes the same historian, in his survey of the Scotch Parliament during the last century of its existence, "applied his whole ingenuity to secure for the Crown the permanent control" of the election of the Committee of Articles; "and though he might overstate his power when, in his speech at Whitehall to the Parliament of England (1607), he boasted that in Scotland such bills 'only as I allow are put into the chancellor's hands to be propounded to the Parliament, and after this, before I put my sceptre to a law, I order what I please to be erased,' the desired result was fully obtained during the reigns of his successors[3]." "Circumstances," continues Innes, "were most unfavourable to the growth of a sound representative constitution in Scotland. James's wish was to have a Parliament like that of France, a court to register his decrees; and while the system of representation was still in its infancy, his accession to the English Crown seemed to give him the power to carry his wishes into effect. The succeeding Stuarts, though they never found Scotland so easily governed as James boasted, were successful in extinguishing all Parliamentary discussion. The period between the Revolution and the Union was too short to give the habits or the spirit of an independent legislature; and the superior importance attached to the proceedings of the English Parliament had by this time thrown Scotland somewhat into a provincial position[4]."

Small Degree of Representation.

The records contained in the long series of volumes, to which the history of the Scotch Parliament by Innes is printed as a

[1] *Acts of the Scotch Parliaments*, I. x.
[2] *Acts of the Scotch Parliaments*, I. xi.
[3] *Acts of the Scotch Parliaments*, I. xi., xii.
[4] *Acts of the Scotch Parliaments*, I. xii., xiii.

preface, bear out every assertion which he makes as to the unrepresentative and subservient character of the Scotch Parliament. The existence, from the Parliament of Perth to the Revolution of 1688, of the Committee of Articles was in itself sufficient to deprive the Scotch Parliament of a representative and deliberative character. The fact that the nobility sat with the other two estates must also have lessened the importance and been subversive of the independence of the representative element; while the ease with which in 1617 the Crown was able to insist that voice and vote should be allowed to as many as eight officers of State, who were neither of the nobility nor representatives of either of the other two estates[1], again marks the wide difference between the Scotch Parliament and the House of Commons at Westminster.

Perpetuating the Non-representative Character.

The peculiar system on which the old Scotch Parliament was elected was much more favourable to management in the interest of the Crown than the English representative system at its worst; and a perusal of the minutes of the Scotch Parliament, when, in 1707, it was determining by what method the sixteen representative peers were to be elected, which constituencies were to choose the forty-five members of the House of Commons, and on what franchises these forty-five members were to be elected, warrants the suspicion that it was managed to the last, and that there were of its members in its final session men who were interested in establishing, or rather continuing, an electoral system which was to be as easy of management after the Union as the Scotch Parliament had been throughout its history.

The Election of Peers.

The Parliament at Edinburgh began the work of adjusting the old representative system of Scotland to the new conditions due to the Union on the 20th of January, 1707. Its first resolve was that "the sixteen peers and forty-five commissioners for the shires and burghs, to be members of the first Parliament of Great Britain for and on the part of Scotland, shall be chosen out of the present Parliament[2]." Two days later it created the system under which the sixteen representative peers were to be chosen to subsequent Parliaments. The first question was whether the peers were to sit by rotation or by election. The decision was in favour of election. The next question was whether the representative peers should be chosen by ballot or by open election,

[1] Cf. *Acts of the Scotch Parliaments*, IV. 526, 527.

[2] *Acts of the Scotch Parliaments*, XI. 415.

and the decision was in favour of open election[1]. Thus the system stood until the 3rd of February, when it was resolved "that at all meetings of the peers for electing of their representatives, such peers as are absent be allowed to have votes in the said election by proxies, the said proxies being peers, and that the said absent peers may either vote by their proxies, or by sending up lists subscribed by them[2]."

Government Management of Elections of Peers.

From the Union until the end of the century the elections of the Scotch representative peers were managed on behalf of Government much in the same way, although not invariably with the same uniform success, as the elections of the forty-five members of the House of Commons; and in this management the lists, which came into use under the plan adopted by the Scotch Parliament in 1707, played a prominent part. As early as 1708 lists were sent out by Government, and all the influence of Government was used to secure the election of its nominees[3]. The keen and active interest which George III took in the elections of Scotch peers has been described by the Duke of Leeds, who, as Marquis of Carmarthen, was secretary of state for the foreign department from 1783 to 1791. "We met again," he writes of the proceedings of the cabinet on the eve of the election of the Scotch peers in 1784, "at the chancellor's, and settled everything relating to the speech, and the list of Scotch peers. Lord Stormont was in at first[4], and it was said the King wished him to be chosen. His Majesty one day did me the honour to converse with me upon the subject, and said that if Lord Stormont would be quiet, he had no objection to his being on the government list; but if he interfered with and canvassed for other opposition lords the case was widely different. The Duke of Argyll had said his friend Lord Rosebery would willingly consent to be left out of the list to accommodate Government, who meant to recommend some new peers. In the first place his lordship's name was omitted, and Lord Stormont remained. The Duke of Richmond, however, objected to recommend him, and his name was then omitted, and Lord Rosebery's again inserted. It seemed, however, to be the general opinion that unless we were sure of keeping Lord Stormont out, it would be advisable to let his name remain. The experiment,

[1] *Acts of the Scotch Parliaments*, xi. 417, 418.

[2] *Acts of the Scotch Parliaments*, xi. 423.

[3] Stanhope, *Reign of Queen Anne*, ii. 90, 91.

[4] Lord Stormont was a representative peer of Scotland from 1756 to 1790.

however, was tried and failed; for his lordship and Lord Elphinstone were afterwards chosen to the exclusion of two of the government list, viz. the Earls of Marchmont and Rosebery[1]."

Elections of Peers until 1832.

All through the eighteenth century the election of the Scotch peers was managed much in the way described by the Duke of Leeds, and the Scotch peers were usually as much a part of the government forces as the Scotch members in the House of Commons. Only in the closing years of the century was there a change in the attitude of Government towards these elections. When Lord Castlereagh, as secretary for Ireland in 1800, wrote to the Duke of Portland from Dublin to know the attitude he was to take towards the then pending first election of Irish peers, he was informed by the Duke that "the election of the peers in Scotland is now left entirely to the management of the great and respectable friends of Government." "It is now so well understood," continued the Duke of Portland, "that as vacancies occur... the peers of the first respectability in point of rank, fortune, and character, are to succeed, that every idea of contest is in a manner given up; and the election is conducted with almost as little sensation as if the succession was hereditary[2]." By the same mail that carried the Duke of Portland's letter to Lord Castlereagh there went a letter from a permanent official in the Scotch office in London, whom the Duke of Portland regarded as an authority on procedure at the elections of the Scotch peers. "I do not think," wrote this official to Lord Castlereagh, "much information is to be received from our present mode of proceeding, other than that it is more decorous than heretofore, when the government list, with a sort of official treasury note, was circulated among all friendly peers with very little scruple. At the last election, if I remember right, it was managed on the spot by the Duke of Buccleugh and the Lord Advocate, who were furnished with the list Government supported, and we only took care here to obtain proxies of such absentees as they pointed out to us[3]." The practice of sending government lists to Edinburgh was continued until the Whigs came into power in 1831[4].

County and Burgh Representatives.

After the determination of the plan on which the representative peers were to be chosen, the Parliament of Scotland turned its

[1] Duke of Leeds, *Political Memoranda*, 100.

[2] *Castlereagh Correspondence*, III. 369.

[3] *Castlereagh Correspondence*, III. 368.

[4] Omond, *Lord Advocates of Scotland*, I. 347.

attention to the constituencies which were to elect the forty-five members to the House of Commons. At this time all the thirty-three counties and sixty-six royal burghs were represented in the two estates. There was then no uniformity in the number of commissioners from the shires. Some of the counties were represented by as many as four commissioners; others by two; and a few by only one. Except Edinburgh, all the royal burghs were represented by one commissioner from each. On the 27th of January, 1707, the Parliament "considered what proportion the barons and burghs shall have of the forty-five members who are to sit in the House of Commons of Great Britain," and decided that the number of barons should be thirty, and the number from the burghs fifteen[1].

Exclusion of the First Estate.

It was then also enacted "that no peer, nor the eldest son of any peer, can be chosen to represent either shire or burgh of this part of the United Kingdom in the said House of Commons[2]." This was not a new law. It was only the reënactment of a law which had been long in existence, and under which, as recently as 1685, Viscount Tarbet's eldest son had been denied a seat in the Scotch Parliament as one of the commissioners for the shire of Ross[3], and, in 1689, Lord Livingstoune had been refused admission to the House on his election for Linlithgow, because he was the son of the Earl of Linlithgow[4]. This exclusion of the sons of peers from the Parliament of Scotland can be traced as far back as 1587, when, to prevent "confusion of persons of the three estates," it was enacted that "no person shall take upon him the functions, office, or place of all the three estates, or of two of the same, but shall only occupy the place of that estate in which he commonly professes himself to live, and from which he takes his style[5]."

Burgher Law excluding Peers.

Moreover the admission of a peer's son as a commissioner for a burgh, the capacity in which the son of the Earl of Linlithgow sought to take his seat in 1689, would have contravened the laws of the Convention of Royal Burghs—a representative institution peculiar to the country north of the Tweed, whose proceedings had an important part in the Parliamentary and municipal history

[1] *Acts of the Scotch Parliaments*, XI. 418.
[2] *Acts of the Scotch Parliaments*, XI. 418.
[3] *Acts of the Scotch Parliaments*, VIII. 457
[4] *Acts of the Scotch Parliaments*, IX. 11.
[5] *Acts of the Scotch Parliaments*, III. 443.

of Scotland. The Convention of Royal Burghs was in fact a burgher Parliament, whose history is traceable back to 1405[1], and an institution which survived the Union and the Reform Act of 1832. The burgher Parliament had its code of laws governing the representation of the royal burghs in the Parliament of Scotland. It was by its decree of 1619[2] that no royal burgh except Edinburgh sent more than one commissioner to Parliament; and in addition to the Act of 1587 for the prevention of confusion of persons of the three estates, the Convention of Royal Burghs long had on its rolls a decree that "no person could be elected commissioner to represent a burgh in Parliament unless he be a burgess and a resident trafficking merchant in the burgh[3]."

Lapse of the Residential Qualification.

Until as late as 1672 there were royal burghs which successfully appealed to Parliament to be excused sending commissioners, and were, because of their poverty, willing to forego their municipal and Parliamentary privileges[4]. Seats in the Scotch Parliament were not in demand until nearly two centuries later than in the Parliament of England. In the seventeenth century a seat in the Scotch Parliament was shunned as much as seats were coveted in the eighteenth and nineteenth centuries; and not until long after the Restoration did outsiders seek to be chosen as commissioners to Parliament from the Scotch burghs. In 1678 a commissioner from the burgh of New Galloway was excluded, because he was "not qualified conform to the Act of the Convention of Burghs, not being a residentier nor trafficquer in that burgh[5]." As late as 1681 the Act of the Convention of Burghs was cited by the committee on controverted elections[6]; but as an operative force it cannot be traced as surviving that year[7]. In 1700 the Act was again cited, this time as an objection to Sir Andrew Hume taking his seat as commissioner for the burgh of Kirkcudbright; but, to quote the minutes, "the said Andrew was admitted[8]"; and in the Parliament which passed the Act of Union the titles of the commissioners from the burghs of Stirling, Anstruther Easter, Burntisland, Dunfermline, Dumbarton, Culross, Banff, North

[1] Cf. *Acts of the Scotch Parliaments*, XII. 267.
[2] *Acts of the Scotch Parliaments*, I. xi.
[3] *Acts of the Scotch Parliaments*, III. 237.
[4] *Acts of the Scotch Parliaments*, VIII. 38.
[5] *Acts of the Scotch Parliaments*, VIII. 217.
[6] *Acts of the Scotch Parliaments*, VIII. 237.
[7] Cf. *Acts of the Scotch Parliaments*, IX., App., 139.
[8] *Acts of the Scotch Parliaments*, X. 190.

Berwick, Anstruther Wester, Lauder, and Inverary[1] indicate that these commissioners could not have been of the Parliament had the Act of the Convention of Royal Burghs, imposing a residential qualification, remained in force to the last.

Demand for Seats in the Scotch Parliament.

There was, however, no inroad on the usage excluding peers' sons from the representation of shires and burghs; and when the Scotch Parliament, in its final session, passed the resolve in regard to peers' sons, it was only continuing an exclusion of almost as long standing as the Scotch Parliamentary system. It was a usage also which was not assailed until nearly the end of the reign of James VII in the reign of whose predecessor seats in the Scotch Parliament first began to be in demand, and to be the subject of contests in the constituencies and before committees on controverted elections. Even in the reigns of Charles II and James VII seats in the Parliament which met at Edinburgh were never as generally objects of desire as they were at this and at a much earlier period in the Parliament of Westminster. The inroad into the burgh representation of men who were not qualified in accordance with the Act of the Convention of Burghs came only after 1700. Between that time and the Union the proportion of these non-resident commissioners from burghs was not nearly so large as the proportion of non-resident members for the English boroughs all through the seventeenth century; and at no time in the history of the Scotch Parliament were candidates for membership so proportionately numerous as they were for the English Parliament between the Restoration and the Revolution of 1688.

Franchise adopted at the Union.

Following the general apportionment of the forty-five members between the shires and the burghs, and the re-enactment of the exclusion law against the sons of peers, came the resolve of the Scotch Parliament on the question of the franchises on which the thirty commissioners from the shires and the fifteen from the burghs were to be elected. It was adopted on the 27th of January, 1707, and was in the form of a declaration "that none shall elect, nor be elected to represent a shire or burgh...except such as are now capable by the laws of this kingdom to elect or be elected as commissioners for shire or burgh[2]."

County Representatives.

The distribution of the thirty commissioners among the thirty-three shires then represented in the Parliament of Scotland was

[1] *Acts of the Scotch Parliaments*, xi. 302.

[2] *Acts of the Scotch Parliaments*, ix. 418.

next taken up, and was settled by a resolution which coupled the shires of Bute and Caithness, Nairn and Cromarty, and Clackmannan and Kinross; and declared that the representative from each of these groups was to be chosen alternately by the shires, and that "all other shires and stewartries of this kingdom now represented in this Parliament were each to have one representative in the Parliament of Great Britain[1]."

Burgh Representation.

When Parliament distributed the fifteen commissionerships among the sixty-six burghs it first resolved that Edinburgh should have one commissioner[2], and next determined on a scheme under which the other sixty-five burghs were grouped in fourteen districts. The burghs in these districts chose delegates, who elected one commissioner to Parliament. In arranging these groups the burghs were placed, not according to their order in the list of royal burghs, an order by which the precedence of burghs was established, but according to their geographical situation, the most northerly burghs being placed first[3]. There was a precedent for the plan under which burghs were to choose delegates to elect members of the House of Commons. During the Commonwealth both the counties and the burghs elected commissioners, who met at Edinburgh to elect "fourteen persons to represent the shires, and seven persons to represent the burghs of Scotland in the Parliament of England[4]."

Wages before the Union.

At the time of the Union enactments were in force under which commissioners from shires could claim wages and travelling allowances from their constituents. In 1661, only a few years before the House of Commons in England was debating bills for the repeal of the old law under which knights and burgesses could claim wages for services in Parliament, the Scotch Parliament passed an Act[5], which evidently only reaffirmed an Act of 1648, for the payment of wages. This Act of 1661 provided that commissioners for shires were to have five pounds Scots as daily allowance[6], including the first and last days of the Parliament, together "with eight days for their coming and as much for their return, from the furthest shires of Caithness and Sutherland, and

[1] *Acts of the Scotch Parliaments*, xi. 420.
[2] *Acts of the Scotch Parliaments*, xi. 421.
[3] Cf. Douglas, *Election Cases*, ii. 213.
[4] *Hist. MSS. Comm. 10th Rep.*, 77.
[5] *Acts of the Scotch Parliaments*, vi. 235.
[6] The pound Scots is one-twelfth of the pound sterling.

proportionable at nearer distances." It was also provided that the constituencies should defray the expenses to which commissioners were put for the purchase of foot mantles to be worn in the ceremonial riding of the Parliament from Holyrood Palace to the Parliament House. Only seventeen years before the Union, in 1690, when additional commissioners were assigned to the more thickly populated shires and other reforms were made in the representative system, an Act had been passed imposing penalties on absentee or tardy commissioners, and providing that the clerk of register should "give certificates to the commissioners for shires and burghs of their attendance in Parliament, who require the same for exacting their fees from the shires and burghs which they do represent[1]."

Decline of Payment of Wages.

As late as 1695 Sir John Munro of Foulis collected individually from the barons of Ross-shire fees for attending "the four by-past sessions of His Majesty's current Parliament," fees which in the case of the Laird of Kilravock amounted to sixty-four pounds twelve shillings Scots, "payable out of his valued rents in the parish of Nig, according to the stent roll made by the barons' freeholders[2]." There is nevertheless little ground for believing that the Acts of 1661 and 1690 were uniformly or generally enforced at the time of the Union. The Act of 1690, directing the issue of certificates of attendance to those "who require the same," suggests that members were not all paid. As long as the Act of the Convention of Royal Burghs imposing a residential qualification on commissioners from burghs was enforced, it is probable that commissioners from burghs were regularly paid; for with the Convention of Burghs frequently in session, burghs must have grown accustomed to paying allowances to their burgesses who went abroad to attend to burgh business. But after the Revolution there is proof that even in the burghs the system of paying commissioners to Parliament was breaking down; and from this time it is possible to trace agreements between burghs and their representatives in Parliament, similar to those to be found in the municipal records of England in the seventeenth and eighteenth centuries. In the commission which North Berwick gave to Thomas Stewart as its representative in the Convention of the Estates of Scotland of 1689, there is a clause that "the said Thomas Stewart by his acceptance hereof declares that he

[1] *Acts of the Scotch Parliaments*, IX. 236, 237.

[2] Spalding Club, *The Family of Rose of Kilravock*, 386, 387.

is content to serve the burgh in the said Convention gratis, discharging the burgh hereby of all fees and charges in the said account, for now and ever[1]." Just as soon as seats in the Scotch Parliament became objects of ambition—as soon as outsiders became eager to represent the burghs and numerous candidates offered themselves for the representation of the shires—to judge by the experience of the English constituencies the general payment of wages must have come to an end; and it may be accepted that they were not generally paid either in the counties or the burghs at the time of the Union.

No Wages after the Union.

Whether or not wages were actually paid, the Acts of 1648, 1661 and 1690 authorising their payment were all on the statute book when in January and February, 1707, the Parliament at Edinburgh was readjusting the electoral system of Scotland to meet the new conditions growing out of the Union. On the 31st of January Parliament turned to this question of wages, the last of the several questions connected with the reorganised electoral system which it had to determine. It was then moved "That no representative from either shire or burgh from this kingdom to the Parliament of Great Britain shall have any allowance for their charges and expenses in attending the same"; "and," to quote again from the minutes, "after debate it being moved to delay the consideration thereof till next sederunt of Parliament, the vote was put Proceed or Delay. And it carried Delay[2]." The debate was resumed on February 3rd. "The vote was put," reads the minutes, "whether there shall be a clause in relation to the charge and expenses of the representatives for shires and burghs insert in the Act settling the manner of electing, Yea or Not—and it carried Not[3]"; and with the failure of the Scotch Parliament to incorporate the old Acts concerning wages in the new system, wages and allowances paid by constituencies were quietly allowed to lapse.

The System as settled in 1707.

At the Union, therefore—except for the reduction in the number of commissioners, the establishment of a system under which six of the thirty-three counties chose commissioners not at each recurring election but alternately; and the grouping of burghs into districts—the Scotch electoral system was continued

[1] Luder, *Controverted Election Cases*, III. 317; cf. *Official List*, pt. II. 589, 590.

[2] *Acts of the Scotch Parliaments*, XI. 423.

[3] *Acts of the Scotch Parliaments*, XI. 423.

on the basis on which it had existed since the reign of James VI[1], when the representative system in that country may be said to have been perfected, and on this basis it remained until the Reform Act for Scotland was passed in 1832.

[1] Cf. *Acts of the Scotch Parliaments*, I. x.

# CHAPTER XXXIII.

## THE CONVENTION OF ROYAL BURGHS.

Developement of the Scotch Parliament.

For three centuries before James I, in 1427, undertook to establish a system under which the shires as well as the burghs should be represented in Parliament, there had been a legislative assembly in whose statutes was embodied the statement that they were "enacted by the advice and consent of the magnates of the realm and of the whole community[1]." Innes dates such laws as far back as 1230, and affirms that in the reign of David I, from 1124 to 1153, "the burghs of Scotland took their place as recognized members of the body politic of a feudal kingdom[2]." In 1326, when Bruce claimed from his people a revenue to meet the expenses of his glorious war and the necessities of the State, the tithe-penny was granted to the monarch by the earls, barons, burgesses, and free tenants in full Parliament assembled. "The change had taken place silently, perhaps gradually," continues Innes, "but from henceforth undoubtedly the representatives of the burghs formed the Third Estate, and an essential part of all Parliaments and general councils. In this Parliament we have the first developement of what are now considered the fundamental principles of a representative institution. There was a compact between the King and the Three Estates; a claim of right; redress of grievances; a grant of supplies; and a strict limitation of the grant[3]."

The Second Estate.

In the developement of the Parliamentary system of England county and borough representation proceeded side by side. It was otherwise in Scotland. The representative system in the burghs had been long established before there was anything which

[1] *Acts of the Scotch Parliaments*, I. vii.
[2] *Acts of the Scotch Parliaments*, I. vi.
[3] *Acts of the Scotch Parliaments*, I. viii.

had an organic similarity to the county franchise in England either before or after the Act of Henry VI restricting the county franchise to forty-shilling freeholders. Individual attendance in Parliament was demanded from the barons and the free tenants of Scotland until 1427, when the small barons and free tenants were excused from Parliamentary service on condition that they sent as their representatives two or more commissioners from each sheriffdom according to its size. This Act of James I of Scotland was the beginning of the representative system for the shires which existed at the time of the Union. But its development was exceedingly slow. The small barons and free tenants neither attended Parliament nor elected "twa or ma wismen" to represent them, as the Act of 1427[1] directed; and it was not until the Act of James VI was passed in 1567[2], that the county franchise of Scotland was established on a permanent basis, and that the counties generally chose commissioners to sit in Parliament as of the second estate.

Royal Burghs.

Before the second estate thus became a permanent elective element in the Scotch Parliament, burgh representation had been nearly as completely developed as it was at the time of the Union. There were not at this time sixty-six royal burghs. Burntisland was not created a royal burgh until 1585[3]. Glasgow did not take on this dignity until the reign of Charles I[4]; and in 1652–53, when union with England was proposed, there were still only fifty-eight royal burghs[5]. Kilrenny took on the dignity of a royal burgh as late as 1693[6]; while Campbelltown, which brought the number up to sixty-six, was not of the royal burghs, and was not represented in Parliament until 1700[7]. But long before the shires were regularly and continuously represented by commissioners, the royal burghs had been electing commissioners not only to Parliament, but also to the Convention of Royal Burghs, which so long existed side by side with Parliament, which survived it, and until the Union shared with it legislative and fiscal functions in connection with the royal burghs.

[1] *Acts of the Scotch Parliaments*, II. 15.
[2] *Acts of the Scotch Parliaments*, III. 40.
[3] Cf. *Acts of the Scotch Parliaments*, VIII. 506.
[4] Cf. *Hist. MSS. Comm. 1st Rep.*, 126.
[5] Cf. *Acts of the Scotch Parliaments*, VI. pt. II. 793.
[6] *Acts of the Scotch Parliaments*, IX. 240.
[7] Cf. *Acts of the Scotch Parliaments*, X. 204, 206.

Convention of Royal Burghs.

Cosmo Innes affirms that long before the principle of representation can be discovered elsewhere the burghs of Scotland sent delegates to a court of their own, where they framed laws for their common government and reviewed decisions of individual burgh courts. He describes it as a Burgher Parliament, long continued under its successive characters of the Court or Convention of Burghs, and as one of the most remarkable of the peculiar institutions of Scotland[1]. He holds also that the contribution of the burghs to the taxation of Scotland was probably originally voted by the Burgher Court[2]; and the Acts of Parliament, to which his history is the preface, show that until almost the eve of the Union the Burgher Court, now styled the Convention of Royal Burghs, determined the proportion which each burgh was to contribute to the taxation levied by Parliament[3].

Its Part in Taxation.

Proof as to the early date at which the Convention was apportioning taxation is also forthcoming in the registers of the burgh of Aberdeen. These show that Aberdeen's quota was apportioned by the Convention in 1483[4]. There are two records in the Acts of the Scotch Parliaments which give most clearly the position of the Convention of Royal Burghs with respect to taxation during the last century of the Scotch Parliament. In 1649 there was a Convention to "alter the tax roll by which the burghs are taxed, and to proportion the burden according to the present prosperity of the burghs[5]." Concerning a Convention held for a similar purpose at Edinburgh in 1670 the details are much fuller. The Convention was held on the 13th of July; and on August 22nd a report of its proceedings was submitted to Parliament. Sixty-two royal burghs were of the Convention; only four fewer than were represented in the Parliament which preceded the Union, and at the time of this Convention Campbelltown was not yet a royal burgh, and Anstruther Wester and Kilrenny were in such a poverty-stricken condition, that in 1672 both petitioned Parliament for a declaration that "we shall no more be burdened as a burgh royal, nor be obliged to attend Parliament and public conventions as such." Both petitions were granted[6]; and Kilrenny and Anstruther Wester ceased to be royal

[1] *Acts of the Scotch Parliaments*, I. vi.
[2] Cf. *Acts of the Scotch Parliaments*, XI. 267.
[3] Cf. *Acts of the Scotch Parliaments*, XII. 267.
[4] Spalding Club Miscellany, V. 27.
[5] *Acts of the Scotch Parliaments*, VI. pt. II. 491.
[6] *Acts of the Scotch Parliaments*, VIII., App., 16.

burghs, and were not again represented in Parliament, Anstruther Wester until 1690[1], and Kilrenny until 1693[2].

Assessment of the Royal Burghs.

In 1670 there was thus a nearly complete representation of the royal burghs at the Convention held at Edinburgh to revise the tax roll, and to proportion the burden of taxation "according to the present prosperity of the burghs." The report of the Edinburgh Convention, submitted for confirmation to Parliament, sets out that at this time Edinburgh was charged with thirty-three pounds six shillings and eightpence out of each hundred pounds of taxation assessable on the royal burghs. The quota of Glasgow was twelve pounds; Aberdeen seven pounds; Dundee six pounds two shillings; Perth three pounds seven shillings; and so on through the list of sixty-two royal burghs, down to Inverbervie and North Berwick, the smallest of the burghs, whose contribution to each hundred pounds of taxation was one shilling[3]. The apportionments so made by the Convention were laid before Parliament, a procedure which apparently would have given any burgh, dissatisfied with its apportionment as settled by the Convention, an opportunity of protesting against it through its commissioner in Parliament.

Importance of the Convention of Royal Burghs.

There is good ground for thinking that the commissioners to the Convention were also the commissioners to Parliament; for in 1703, when the Burgher Parliament convened not in Edinburgh, but in Glasgow, the Lord High Commissioner signified to the Parliament that, as "a great many of the commissioners from the royal burghs were to meet in the Convention of Burghs this week at the burgh of Glasgow," it would be well that Parliament should adjourn, and an adjournment accordingly took place[4]. Incidentally this adjournment in 1703 is a proof of the importance of the Convention of Royal Burghs in the closing years of the Scotch Parliament. The adjournment suggests that the Convention was nearly as important as Parliament; and it certainly warrants the assumption that the burghs were often represented in the Convention and in Parliament by the same commissioners.

Origin of the Court of Burghs.

Cosmo Innes, in his history of the Scotch Parliament, deals only incidentally with the Convention of Royal Burghs. "The constitution of Scotland," he writes, "is more obscure in its origin

[1] *Acts of the Scotch Parliaments*, IX. 232.
[2] *Acts of the Scotch Parliaments*, IX. 340.
[3] *Acts of the Scotch Parliaments*, VIII. 23.
[4] *Acts of the Scotch Parliaments*, XI. 73.

and progress than that of most other countries of Europe. The loss of its earlier records and of contemporary chronicles, if such ever existed, may account for the scantiness of our information regarding the early state of the country and the development of the constitution, which must have undergone several changes before arriving at the state in which we are able to witness it in operation[1]." The printed records of the Convention of Royal Burghs begin only with 1552[2]; and the lack of records and chronicles to which Innes thus refers, accounts perhaps for the fact that he gives no detailed history of the origin of the Court of Burghs. Only inferentially does he date the beginning of the representative institution which, for more than three centuries before the Union in 1707, had been so closely interwoven with the Scotch Parliament, and so important a factor in the municipal life of Scotland. Innes states that the Court of Burghs came into existence before either the Parliament of Scotland, or the beginning of the representative system in England. He affirms that "long before the representative principle can be discovered elsewhere, the burghs of Scotland sent delegates to a court of their own, where they framed laws for their common government, and reviewed decisions of individual burgh courts[3]."

The Court in the Fifteenth Century.

The Acts of the Scotch Parliament furnish evidence that the Court of Burghs was well established in this work when the fifteenth century opened. There is a record of a meeting of the Court in 1405, in which it is described as the Court of the Four Burghs. The four burghs then were Edinburgh, Berwick, Stirling, and Roxburgh[4]. In 1454 there was an Act of Parliament ordaining "that the Parliament of the Four Burghs," then named as Edinburgh, Stirling, Linlithgow, and Lanark, should meet annually on a fixed day after the Feast of S. Michael the Archangel, "as assessors of court to determine appeals from the courts of the whole burghs of the kingdom; and also to give, deliver, and receive the measure of an ell, firlot or boll, lagin or stone, according to use and wont, to the king's lieges and commons; and to determine all other matters which may arise according to the statutes and customs of the burghs[5]."

[1] *Acts of the Scotch Parliaments*, I. v.
[2] *Records of the Convention of Royal Burghs of Scotland*, 1866.
[3] *Acts of the Scotch Parliaments*, I. vi.
[4] *Acts of the Scotch Parliaments*, I. 703.
[5] *Acts of the Scotch Parliaments*, XII., Supp., 23.

It becomes the Convention of Royal Burghs.

After 1487 references to the Burgher Parliament as the Court of the Four Burghs or the Parliament of the Four Burghs come to an end; for in that year there was passed an Act of Parliament giving the Convention a more definitely national and more inclusive constitution than had been bestowed on it by the Act of 1454; although that Act brought all the royal burghs within the jurisdiction of the Convention. The Act of 1487[1] authorised annual meetings of the Convention; enacted penalties against those burghs which failed to send commissioners; and with a little more fulness than the Act of 1454, but still with a generality of statement which must have given a wide latitude so far as the municipalities were concerned, defined the work of the Convention. "In time to come," it reads, "commissioners of all burghs, both south and north, shall convene and gather together once in each year, in the burgh of Inverkeithing, with full commission to commune and treat for the welfare of merchants, the good rule and common profit of the burghs." Burghs not sending commissioners were to pay five pounds towards the expenses of the burghs which did send commissioners. Thus, before the end of the fifteenth century, and before the principle of Parliamentary representation was well established in the shires, the Convention of Burghs was thoroughly representative in character: it was in possession of power to secure its continuity, and to deal with almost any question which concerned the politics or economy of the royal burghs.

Power of the Convention.

From this enactment of 1487 until within a few years of the end of the Scotch Parliament there is a series of laws, and later on of resolves adopted on the recommendation of committees on controverted elections, all adding to or reaffirming the powers exercised by the Convention of Royal Burghs. These recommendations from election committees came during the last half century of the Scotch Parliament; for until after the Commonwealth there were no disputed elections to be referred to committees. But late in the history of the Scotch Parliament as these recognitions of the authority of the Convention came, and infrequently as they occur, they are significant as illustrating the power exercised by the Convention in connection with the election of commissioners from burghs to Parliament. This power was amply displayed in 1574, when the Convention of Royal Burghs passed an Act by which the qualification of merchant was required for commissioners to Parliament from burghs, and craftsmen were

[1] *Acts of the Scotch Parliaments*, II. 179.

excluded as commissioners[1]. Again in 1619, notwithstanding an earlier enactment of Parliament that there should be two commissioners to Parliament from each burgh, the Convention determined that, except in the case of Edinburgh, one was sufficient; and in accordance with this determination, no burgh except Edinburgh thereafter sent more than one commissioner to Parliament[2]. In 1578 there was an Act of Parliament ratifying and approving all Acts in favour of the burghs, and ordaining that they should have "full force and strength in all times hereafter, and stand as perpetual law," and the Act also reaffirmed the freedom and privilege of the burghs to convene "for such matters as concerns their estate[3]."

Burgh Interests in Parliament.

Acts of Parliament like this of 1578, and others which preceded or followed it, suggest that, however the commissioners for burghs in Parliament may have been managed in the interest of the Crown in matters of national concern, these commissioners never failed to exert their influence in the determination of questions in Parliament which touched municipal life and the well-being of the burghs[4].

Increase in the Power of the Convention.

The Convention of Royal Burghs must have had many commissioners in Parliament ready to seize any opportunity of adding to the importance and strength of the Convention. In 1578, the same year as witnessed a general confirmation of the privileges of the burghs and a perpetuation of their right to meet in Convention, there was another Act of Parliament[5] under which the Convention was authorised to sit four times every year. In 1581 power was given to the burghs to hold a Convention "when and where they think expedient"; and as an addition to the powers which the Convention had enjoyed since 1487 to mulct burghs which failed to send commissioners, there was in this Act of 1581 a clause which provided that the Lords of Council and Session "were to grant and direct letters of horning or poinding[6] against the burghs absent from the Convention." These letters or warrants for the collection of the fines imposed on burghs which

[1] Cf. Luder, III. 323.

[2] Cf. *Acts of the Scotch Parliaments*, I. xi.

[3] *Acts of the Scotch Parliaments*, III. 102.

[4] Cf. Colston, *Incorporated Trades of Edinburgh*, xlii.

[5] *Acts of the Scotch Parliaments*, III. 102.

[6] "Poinding" is the Scotch law diligence whereby the property of the debtor's moveables is transferred to the creditor using the diligence. Bell, *Dictionary and Digest of the Law of Scotland.*

ignored the summons to send commissioners to the Convention, were to be issued at the instance of the Convention, "without further process and calling of parties thereto." By this Act also it was made possible for a majority of the burghs, "or the burgh of Edinburgh alone, with the consent of six or eight of the burghs," to call a Convention at any time; and the penalty of five pounds on burghs failing to send representatives, imposed by the Act of 1487, was increased to twenty pounds, to be collected in the summary manner provided for by the clause authorising the issue of letters of horning and poinding[1].

Authority of the Convention.

By this Act of 1581 the constitution of the Convention of Royal Burghs apparently became complete. Subsequent records show that the heavy penalties recoverable from delinquents had the effect of securing a full attendance at the Burgh Conventions; and henceforward a royal burgh could free itself from its obligation to send commissioners to the Convention only by Act of Parliament. Kilrenny and Anstruther Wester sought to free themselves from this obligation quite as much as from their obligation to elect commissioners to Parliament when, in 1672, they petitioned Parliament to strike them from the list of royal burghs. The burgesses of Kilrenny, to quote their petition, asked Parliament for a declaration that "we shall no more be burdened as a burgh royal, nor be obliged to attend Parliament and public conventions as such[2]"; and with freedom from these two obligations, these burghs, until they came back into the list after the Revolution, were not charged with their quota to the sixth part of the national revenue raised from the royal burghs.

Certain Aspects of its Work.

From 1581, when the constitution of the Convention of Royal Burghs had become complete, interest in the Burgher Parliament centres in its close connection with taxation raised in the burghs for national purposes; its relation to burgh representation in Parliament; and its occasional efforts to push into a larger field than municipal politics.

Its Control over Burgh Representation.

The part taken by the Convention in raising national revenue has been described. Its relation to burgh representation in Parliament is illustrated by its law of 1619, decreeing that the burghs, other than Edinburgh, need send only one commissioner to Parliament; and by its older enactment that no person could be elected "commissioner to represent a burgh in Parliament,

[1] *Acts of the Scotch Parliaments*, III. 224.

[2] *Acts of the Scotch Parliaments*, VIII., App., 16.

unless he be a burgess and a residing trafficking merchant in the burgh." In 1617, two years before the enactment of the law of the Convention as to single commissioners from burghs, forty-five royal burghs were represented in Parliament. Of these eighteen then sent two members[1], a fact which suggests that the burghs had never generally complied with the enactment of Parliament requiring them to elect two commissioners. The Convention passed its law in 1619; and although it was directly in conflict with a Parliamentary enactment then on the statute books, the order of the Convention was not protested by Parliament. It was not at this time formally sanctioned by Parliament[2], but none the less it went into effect. The apparent silent acceptance of this law of the Convention bears out the impression, which grows on one in tracing the developement and increasing power of the Convention of Royal Burghs, that there was no disposition to bring Parliament into conflict with the Convention.

Its Law sustained by Parliament.

Until after the Commonwealth there was little need or disposition to question the law of the Convention imposing a residential qualification on all commissioners serving the burghs in Parliament; because outsiders showed no eagerness to seek election from the burghs. There were apparently no lawyers in Edinburgh eager to be of the Parliament, as for a century and a half earlier there had been in London—lawyers who ranged the country in search of likely boroughs, and who were ready with offers to serve them without pay in the House of Commons. The order of the Scotch Parliament of 1589, that, to prevent confusion of persons of the three estates, "no person shall take upon him the function, office, or place of all three estates, or two of the same," would have served to prevent the sons of the Scotch nobility from accepting commissions to Parliament from the burghs, even if they had been so disposed; and it was not until 1678 that Parliament was called upon to act on the law as to residence imposed by the Convention of Burghs on commissioners representing the burghs in Parliament. In that year a commissioner who had been returned by New Galloway was denied a seat in Parliament, because, on his own admission, he was not "a residentier nor a traffiquer in the said burgh," and consequently not qualified in accordance with the Act of the Convention of Burghs[3].

[1] Cf. *Acts of the Scotch Parliaments*, IV. 528.

[2] Cf. *Acts of the Scotch Parliaments*, I. xi.

[3] *Acts of the Scotch Parliaments*, VIII. 217.

In 1678, in another disputed election case, the committee on controverted elections offered it as their opinion that the commission granted to Thomas Stoddart for Lanark ought to be sustained, "as being qualified conform to the Act of the Convention of Burghs"; and Parliament approved of the report[1].

Residential Qualification disappears in the Counties.

Although the Convention of Royal Burghs was still so important in 1703 that Parliament had to adjourn, because many of the commissioners from the royal burghs were about to meet in the Convention of Burghs at Glasgow[2], the Convention law decreeing the residential qualification could not withstand the new influences which were at work in the burghs and in Parliament. By this time men of the landed classes were eager to be of the Parliament, and began to fasten themselves on the burghs, as the landed classes in England had done there a full century and a half previously. As early as 1669 the residential qualification for commissioners for shires in Scotland had been abrogated. It disappeared simultaneously with a similar qualification for electors in counties. "Forasmuch," reads the Act making the innovations in the county electoral system, "as questions have arisen in the election of commissioners from the shires to the Parliament, whether such heritors, and others as by law are capable to vote in the election of commissioners or to be elected, being non-residents within the shire, should be admitted as capable to vote in the election or to be elect; for clearing whereof His Majesty, with the advice and consent of his estates in Parliament, finds and declares that non-residence shall not be any exception why any, otherwise qualified, may not vote in the election, or be elected commissioners[3]."

First Election Committee.

Seats in the Scotch Parliament had come to be so much in demand by 1678 that in that year there came into being a committee to deal with controverted elections. So far as I can discover, it was the first committee appointed for this work. Hitherto there had been no controverted elections, chiefly because no one was sufficiently eager to be of the Parliament to carry an election contest beyond the constituency immediately concerned. But in 1678 there were "some debateable commissions concerning several commissioners from shires and burghs"; and it was deemed expedient to refer them to a committee[4].

[1] *Acts of the Scotch Parliaments*, VIII. 217.
[2] Cf. *Acts of the Scotch Parliaments*, IX. 73.
[3] *Acts of the Scotch Parliaments*, VII. 553
[4] *Acts of the Scotch Parliaments*, VIII. 216.

Constitution of the Committee.

The King's commissioners nominated the committee, a mode of choosing a committee quite different, in form at least, from that of Westminster, and the committee "met in Lord Commission's lodgings in the Alley of Holyrood House." The first work of the committee was to draw up rules determining the position of commissioners whose elections were in dispute, especially as to their relations to Parliament pending the determination of their cases. The committee recommended that, except in the case of double elections, members objected to ought not to be debarred from voting "until present objection be tried," and that no objection should be received "either against the persons, electors or elected, the same not having been objected and admitted the time of election, except in the case of double elections." "Otherwise," continued the recommendation, "His Majesty's service and the safety of the country, which requires upon several exigencies to call Convention of Estates, might be altogether frustrated[1]." From 1678 until the Union committees to deal with controverted elections were regularly chosen. By 1700 the phraseology of Westminster had been adopted in Edinburgh, and the committee chosen at the commencement of a Parliament, not by the Lord High Commissioner as in 1678, but from and by each of the three estates, each being represented thereon by five members, was now referred to in the records as the Committee for Controverted Elections[2].

Evading the Residential Qualification.

From 1678 may be dated the time when seats in the Scotch Parliament became in much request; and from this time until 1700 the Act of the Convention of Royal Burghs, establishing a residential qualification, had to meet a new strain. There was undoubtedly pressure upon it, or desire to evade it, in some of the burghs; for in 1681 the burgh of North Berwick made use of an expedient similar to that adopted in the sixteenth century in freeman boroughs in England, in which compliance with the law as to residence was secured by making the member elected to the House of Commons an honorary freeman. North Berwick in 1681 issued a burgess ticket to a commissioner elected by the municipal council, so that he might comply with the Act of the Convention of Royal Burghs. But the device failed. Parliament declared his election invalid, and seated another candidate who was "a residing trafficking merchant in the burgh[3]."

[1] *Acts of the Scotch Parliaments*, VIII. 218.
[2] Cf. *Acts of the Scotch Parliaments*, X. 207.
[3] Cf. *Official List*, pt. II. 585.

Election of Men of the Second Estate.

In Parliament at this time there was also a movement against the old law. To the Parliament of 1681 Sir Patrick Murray had been elected as commissioner of the burgh of Selkirk. He is, so far as I can discover, the first man obviously of the second estate who was objected to under the Act of 1587, which decreed that a man should occupy the place in Parliament only of that estate of which he commonly professed himself, and from which he took his style; and the first who after his acceptance of a commission from a burgh was compelled to contest the Act of the Convention of Royal Burghs imposing a residential qualification. Murray was elected commissioner for the burgh of Selkirk on the 18th of June, 1681[1]. But when he sought to take his seat in Parliament it was moved that his commission might be read; "and being read, it was objected that Sir Patrick Murray was not a burgess at the time of election, and so could not be sustained[2]." To this objection of non-compliance with the Act of the Convention of Royal Burghs it was answered, on behalf of Murray, that "contrary practice hath been sustained in many cases...in this current Parliament." There was in this Parliament at least one commissioner who apparently could have had no better claim than Sir Patrick Murray to be classed as "a residing trafficking merchant," and who was obviously quite as much of the second estate as the would-be commissioner from Selkirk. This was Sir Donald Bayne of Tulloch, councillor, who was commissioner from the burgh of Dingwall[3]. If, however, Murray and his supporters in Parliament relied on the Dingwall precedent, it failed them; for Murray was declared disqualified "in respect he was not a resident trafficking merchant" in the burgh of Selkirk, and the seat for which he had been contending went to Andro Angus, the town clerk[4].

Parliament over-rides Convention Laws.

So far as can be learned from the Official Return of Members of Parliament, and from the minutes of the Scotch Parliament, Sir Patrick Murray's was the last commission rejected for non-compliance with the conditions of representation imposed by the Convention of Royal Burghs. The commission of Lord Livingstoune from Linlithgow was rejected after 1681; but this was due, not to non-compliance with the old law of burgh representation, but to the fact that Lord Livingstoune, as son of the Earl of

[1] Cf. *Official List*, pt. II. 585.
[2] *Acts of the Scotch Parliaments*, IX., App., 139.
[3] *Official List*, pt. II. 585.
[4] *Official List*, pt. II. 585.

Linlithgow, was incapable under the Act of 1587 of representing either a shire or a burgh[1]. Not until 1700 is there an official record of the deliberate over-riding by Parliament of the law of the Convention of Burghs. In that year Sir Andrew Hume, son of the Earl of Marchmont, was chosen at a by-election as commissioner for the burgh of Kirkcudbright[2]. When Hume was about to take his seat the same objection to him was raised as had been successfully raised against Sir Patrick Murray in 1681; but to quote the official record, the "said Sir Andrew was admitted[3]." Thereafter the law of the Convention of Burghs as to residential qualification for burgh commissioners fell into desuetude; and in the discussions in the Scotch Parliament, in 1707, on the settlement of the representative system, there is not a word which recalls the fact that it had been possible for any other body than Parliament to declare who should not be eligible to sit as members of the third estate.

Essays into National Politics.

The earliest efforts of the Convention of Royal Burghs to push itself into a wider field than municipal politics were made during the Commonwealth. In 1652–53 the question of Union with England was considered by the Convention. Fifty-eight royal burghs were then represented, and of these fifty-four assented to the Union[4]. In 1674 the Convention interested itself in the question of Parliamentary reform. "It took the liberty to represent as well the grievances as the rights and privileges of their estate" to Charles II; and this venture into a larger field brought much misfortune to several of the burgh commissioners. The representations proved "offensive to such as then had the greatest power and influence about His Majesty. Their letter was sent by His Majesty to the Lords of the Privy Council, ordering them to inquire who were the persons, members of the Convention of Burghs, who had been most active in framing and sending the aforesaid answer. The Lords of Privy Council thought good to fine the provosts of Aberdeen and Jedburgh, who sent the answer, one thousand pounds and one thousand merks; and fined William Anderson, provost of Glasgow, six thousand merks and imprisoned him for several months until he paid every farthing[5]." The burghs of Aberdeen and Jedburgh indemnified their commissioners. Glasgow was not willing to take

[1] *Official List*, pt. II. 590.
[2] *Official List*, pt. II. 595.
[3] *Acts of the Scotch Parliaments*, x. 190.
[4] *Acts of the Scotch Parliaments*, VI. pt. II. 793.
[5] *Acts of the Scotch Parliaments*, IX., App., 77.

upon itself the responsibility for the action of its provost as member of the Convention; and after the Revolution Anderson's son made an appeal to the Scotch Parliament to reimburse him the fine which had been imposed by the Privy Council of Charles II[1].

Influence of the Convention at the Union.

The last essay of the Convention into national politics prior to the Union was in 1703. Then the feeling of the royal burghs, as expressed through the Convention, was hostile to the proposed Union with England, and the Convention sent a memorial to the Scotch Parliament "against effecting such an incorporating union as is contained in the articles proposed[2]." It was probably due to the weight of the Convention in the Scotch Parliament, and to the desire to conciliate it, that the Articles of Union contained a reservation of "the rights and privileges of the royal burghs in Scotland, as they now are[3]." This clause perpetuated the Convention of Royal Burghs, although by the Union the Convention lost the influence which it had so long had on Parliament; and this Burgher Parliament, the oldest representative institution in Great Britain, survived to advocate burgh reform in 1792[4] and to seek to influence legislative action[5] when, in 1833, the reformed Parliament of Great Britain and Ireland restored the right of electing the common councils and magistrates of Scotland to the inhabitants of the burghs[6].

Burgh Franchises and the Convention.

The system then reformed dated from an Act of Parliament of James III, passed in 1469[7]. It is not possible to trace the causes leading up to the Act of 1469, which threw the election of burgh commissioners to Parliament into the hands of the municipal councils, made the councils self-elective, and also placed the election of commissioners to the Convention of Burghs in the hands of the burgh corporations, as well as the appointment of all municipal officers. At that time the Convention of Burghs touched the municipalities more closely than Parliament; and in view of the influence which the Convention had with Parliament, there is warrant for the conjecture that the Act of 1469, which for more than two centuries gave municipal councils the power to elect

[1] *Acts of the Scotch Parliaments*, IX., App., 77.
[2] *Acts of the Scotch Parliaments*, XI. 315, 316.
[3] *Articles of Union*, XXI.
[4] Cf. *Mirror of Parl.*, 1833, IV. 3731.
[5] Cf. *Mirror of Parl.*, 1833, III. 2571.
[6] 3 and 4 W. IV, c. 76.
[7] *Acts of the Scotch Parliaments*, II. 95.

commissioners to the Scotch Parliament, originated with the Convention of Royal Burghs. If the responsibility for the Act rested with the Convention it is worth noting that in 1833 the Convention petitioned Parliament in favour of a five-pound householder municipal franchise in the smaller burghs, instead of the uniform ten-pound franchise[1] which the Government had embodied in the Burgh Reform bill.

[1] Cf. *Mirror of Parl.*, 1833, III. 2571.

# CHAPTER XXXIV.

## BURGH REPRESENTATION IN THE SCOTCH PARLIAMENT.

Comparison with English Borough History.

BURGH representation in Scotland before and even after the Union has less historical interest than attaches to borough representation in England. In England it is possible to account for the variety of borough franchises which became established between the reign of Elizabeth and the Reform Act of 1832. It is possible after the House of Commons obtained control over controverted elections to ascertain when an inhabitant householder franchise was established or confirmed in this borough, when the burgage holders obtained their exclusive right in that borough; when the freemen became dominant in one borough, and when the municipal corporation obtained control of Parliamentary elections in another. Further, it is possible to follow the local contests which were waged so frequently and over such long periods against narrow franchises; and to note the varying success which attended these contests in the constituencies and before the House of Commons and its committees. Again, the means can be traced by which the landed aristocracy gained control of borough representation, and we can follow the greatly altering relations between members of the House of Commons and their constituents after the payment of wages disappeared, and outsiders, whether as patrons or as candidates for the House of Commons, began to take an active interest in the political concerns of the boroughs. In short, the economy and life of the English municipalities were completely revolutionised by the fact that from the closing years of the sixteenth century until the first quarter of the nineteenth there were outsiders who desired either to represent them in the House of Commons, or to control the boroughs in the choice of their representatives. These changes in the English boroughs were worked out locally, and, excepting the Last Determinations Act of 1729, without any enactments

from Parliament to help in bringing them about. They all had their origin in the days when seats in the House of Commons first became in demand, and were accelerated as the competition for seats became more general and more keen.

Paucity of Detail concerning Scotch Burghs.

The representative history of the burghs of Scotland presents no such variety of interest to the student who undertakes to follow it through the existing records. There are no official records of local contests for wider burgh electorates such as mark the municipal history of scores of English boroughs. There are no records of controverted elections to furnish first-hand material for students of political and social life in the royal burghs of Scotland. Freemen, or burgesses, who correspond in some degree to the freemen of English boroughs, there were in the Scotch burghs. But in the Parliamentary records of Scotland there is a paucity of detail concerning them. What there is affects chiefly their privileges of trade, and the conditions under which the trade guilds admitted the sons of burgesses and newcomers to engage in trade. Originally these trade guilds had their part in municipal government; but it was less direct than the part which freemen in England had in municipal and Parliamentary elections.

Women in Burgh Life.

There is little information in the Scotch Parliamentary records as to the political position of women in the royal burghs. These records do not tell, as the Journals of the House of Commons do with such fulness of detail, of the political privileges enjoyed by the wives and daughters of burgesses or freemen, of marriages with the widows and daughters of freemen which carried, as a dower to the husband, the right to vote at municipal and Parliamentary elections.

Burgh Patrons late in coming.

It is not possible until the eve of the union of Scotland with England to discover any endeavours of the landed aristocracy to fasten themselves on the burghs so as to control elections to Parliament. The earliest of these efforts may be dated from Sir Patrick Murray's election as a commissioner from Selkirk. It failed, and so did Lord Livingstoune's attempt to take his seat as a commissioner from Linlithgow in 1689; and it was not until after 1700 that men of the landed classes were able to take their place in Parliament as representatives of the burghs. Thus the movement of the landed classes to obtain control of the Parliamentary representation in the burghs, which had begun in England early in the sixteenth century, did not begin in Scotland until the closing years of the reign of Charles II. It had then no success, and was attended with none until the Scotch Parliament was nearing its end.

Honorary burgesses there were in the Scotch burghs long before the Union. They were made at Aberdeen in the closing years of the sixteenth century[1]; and the register of burgesses and guild brethren of Edinburgh shows that occasionally persons of distinction and importance were admitted burgesses[2]. At Aberdeen honorary burgesses were made with much Scotch caution and wariness. When the names of these burgesses were entered on the burgh records it was distinctly stated that they were admitted as gentlemen, and were not to be occupiers or entitled to the privilege of trading[3]. The conditions made at Aberdeen seem to have been general with Scotch burghs; for in 1765, in an election case in which it was sought to unseat a member because he was not a burgess of one of the burghs for the district for which he had been elected, it was stated to be well known that honorary burgesses in Scotland had no corporate rights, and could join in no corporate act. "They cannot," it was added, "be chosen into the magistracy of a burgh, nor can they vote at a poll election. In short, the creation of them is a vain compliment, of which the burghs are known to be very liberal to all classes of the people[4]." Honorary Burgesses.

In the reign of the last of the Stuart kings honorary burgesses with larger privileges, honorary burgesses such as swayed elections in many English boroughs in the last century and a half of the unreformed Parliament, made their way into a few of the Scotch burghs. But the Scotch Parliament did not permit them to survive the Revolution. For a brief period in Dundee these honorary burgesses served the same purpose as honorary freemen in English boroughs. At Dundee, where outsitters had been made by the recommendation and on the nomination of James VII, "in an arbitrary and despotic way," their creation served the King's ends; but in 1689 Parliament was informed by petition from the people of Dundee, "that the present magistrates and council of the said burgh are not their true magistrates"; and Parliament took favourable action on the petition. Ordinarily in Scotch burghs the magistrates and municipal council were not chosen by popular election. But to purge Dundee of its honorary burgesses, and to dispossess the magistrates and council whose election had been Their Intrusion at Dundee.

[1] Spalding Club, *Extracts from the Accounts of the Burgh of Aberdeen*, iv. 52.
[2] *Hist. MSS. Comm. 1st Rep.*, 126.
[3] Spalding Club, *Extracts from the Accounts of the Burgh of Aberdeen*, iv. 52.
[4] Douglas, *Election Cases*, ii. 205.

influenced by honorary burgesses, the town clerk was authorised "to convene the whole burgesses" who had borne and did bear burgage duty, and were liable to watching and warding within the burgh, "excluding from this number all honorary burgesses not bearing scot and lot, with the town servants, pensioners, beadmen, and the like," to elect a new set of magistrates[1].

The Dundee Reform of 1689.

An Act on such lines, passed by the English Parliament at the Revolution, would have accomplished more than the Reform Act of 1832 in extending the Parliamentary franchise, although it would have failed to equalise the distribution of electoral power; for at the election ordered for Dundee in 1689, not only were honorary burgesses excluded, but municipal servants were disfranchised, as were also men in receipt of poor law relief; and a franchise was created for this special election closely akin to that which had survived in the few English boroughs in which, as in the first century of the House of Commons, the electors were the inhabitant householders who paid scot and lot and were liable to watch and ward.

Burgh Life unaffected by Demand for Seats.

Except in the few burghs in which, during the short reign of James VII, honorary burgesses were introduced, municipal politics in the Scotch burghs before the Union seem not to have been subservient to national politics. There were no outsitters as there were in the English freeman boroughs; for in the Scotch burghs the non-burgess had no legally recognized status even as a delegate charged with the duty of representing a burgh at a Parliamentary election until nearly forty years after the Union[2], by which time the Scotch burghs were as much under the control of the landed families as the majority of the Parliamentary boroughs in England. Municipal life in Scotland until the eve of the Union, in short, presented none of the developements arising out of the connection of the municipalities with the Parliamentary system which are such deeply marked characteristics in the history of English boroughs.

Corruption of Scotch Burghs.

Nevertheless the Scotch burghs were dominated by oligarchies, which were in possession long before the Union; and when the end of the Scotch system of burgh Parliamentary representation came in 1832, the political condition of the burghs was uniformly worse than that of the English boroughs. It was even worse than it had been in 1784, when Fletcher and other Edinburgh Liberals associated

[1] *Acts of the Scotch Parliaments*, ix. 42.

[2] Cf. 16 Geo. II, c. 11.

themselves to bring about a reform which would lead to the "emancipation of Scotland from that vile system of irresponsible government and Parliamentary corruption which disgraced and depressed it and made it a by-word among its English neighbours[1]."

Burgh Reform in 1833.

In 1833, when a Liberal Government, supported by a majority elected on the new Parliamentary franchises, took up the work of burgh reform, the condition of the Scotch burghs had become so notoriously and uniformly bad that the old municipal corporations had no champions either in the House of Commons or in the House of Lords. In 1835, when the English municipal reform bill was before Parliament, the English corporations had many champions, as they had had in 1832 when they were severed from their corrupt connection with the Parliamentary franchises, a connection which in many of them dated back to the days of the Tudors. But when the Scotch municipal reform bill was before Parliament in 1833 not a member of the House of Commons or of the House of Lords is on record as having put in a word of extenuation, or sought to uphold the system of municipal government which had existed for three centuries and a half, and in which, prior to the Parliamentary Reform Act of 1832, there had been no constitutional change, either by the Scotch Parliament or by the Parliament at Westminster.

No Defence of the Old System.

There were pleas for two burghs; suggestions that Fort Ross and Inverary, by reason of their peculiar conditions, should be left out of the government scheme of reform[2]; but for the Scotch municipalities generally no defence was offered. Members of the House of Commons, who had opposed Parliamentary reform and the severance of the municipal councils in Scotland from their connection with the Parliamentary representative system, "cordially rejoiced," to quote the words of Major Cumming Bruce[3], "that the old municipal system was to be swept away," for "it was a system universally and justly complained of." In the House of Lords the statement was made by the Earl of Haddington, and went without denial, that "there is no man breathing who pretends to stand up for and maintain this system of self-election[4]"; while the Earl of Rosslyn—who, as Sir James St Clair Erskine, had been three times elected member for the

[1] *Autobiography of Mrs Fletcher*, 58.
[2] *Mirror of Parl.*, 1833, III. 2578.
[3] *Mirror of Parl.*, 1833, III. 2573.
[4] *Mirror of Parl.*, 1833, IV. 3736.

Kirkaldy burghs[1], and must have been familiar with the condition of Scotch municipalities—declared that all were agreed as to the propriety of uprooting the principle of self-election[2]. All the discussions in Parliament in 1833 went to corroborate the description of Scotch municipal life which had been given half a century earlier; and the sweeping away of the old mode of government of the royal burghs was the least difficult of the great measures to which Parliament had to address itself in the years immediately following the first reform of the House of Commons.

System not due to Political Management.

Bad as these Scotch municipalities were in the eighteenth and the first thirty years of the nineteenth century, it cannot be charged that their corruption and depravity, like that of the English municipal corporations, was primarily due to their place in the representation of Scotland. After the Union the municipal oligarchies of Scotland were exposed to much greater temptations and much stronger pressure from without than before 1707. The municipal evils of Scotland were aggravated by the place of the municipalities in the electoral system. It could not have been otherwise in view of the methods by which Scotland was managed politically from the days of Islay to those of Dundas. But the constitutions of the royal burghs dated from 1469, from the period when the Scotch system of Parliamentary representation was still undeveloped; and when these municipal constitutions came into existence so few men were desirous of being of the Parliament that it is impossible to conceive that the Act of 1469 was passed with an eye to the control of Parliamentary elections.

System older than such Control.

From the Revolution of 1688 to 1832 influences were at work in the Scotch burghs similar to those which, from the Tudor dynasty, were at work in the English boroughs; and the Scotch burghs, from the nature of their municipal constitutions, presented a better field for political manipulation directed to the control of Parliamentary representation, than most of the English boroughs. But in the history of the Scotch burghs such influences were comparatively modern; and however bad may have been the condition of the burghs prior to the municipal reform of 1833, their worst characteristics must have been stamped on them before the creation of the new and adverse influences which surrounded the burghs after the Union by reason of the fact that governments, whether Whig or Tory, had need of a corps of subservient members from

[1] *Official List*, pt. II. 212, 225, 324; Doyle, III. 181.
[2] Cf. *Mirror of Parl.*, 1833, IV. 3734.

Scotland at Westminster, and directly or indirectly, in money or in official patronage, were willing to meet the charges of electing them.

Proof that Seats were not in Demand in 1690.

Two reasons account for the marked differences in the municipal history of England and Scotland. The most important of these is that, until 1678 at the earliest, seats in the Scotch Parliament were not much desired. Commissions to represent the shires in Scotland cannot have been much prized even as late as 1693; for in 1690 there was an Act[1] authorising fifteen counties to send additional commissioners. This redistribution measure had been passed on specific instructions from William III. "You are," the King wrote to the Lord High Commissioner, "to pass an Act that the greater shires...such as Lanark, or others where it shall be found convenient, may send three or four commissioners to Parliament, that the representation may be more equal[2]." By the measure of 1690 eleven of the counties were henceforward to send two additional members; four were to send one additional member; and in all twenty-six members were to be added to the representation of the shires, or the second estate[3]. In England, in 1690, or at any time during the seventeenth century, there would have been a hundred candidates for the additional seats. In Scotland, although the residential qualification for commissioners of the shires had been abrogated in 1669[4], and although, under laws of comparatively recent date, commissioners from shires could claim *per diem* allowances and travelling expenses to and from Parliament, it was not until 1693 that all the counties sent the additional commissioners assigned to them by the Act of 1690. Then they did so only after Parliament—on the recommendation of the committee on elections, which had been ordered "to consider the case of such shires as had not elected members, or who had not elected new members in place of the deceased, or additional members where a greater number of commissioners were allowed by a late Act"—passed another Act, compelling the freeholders of the delinquent counties at the next head court to elect the commissioners "which by the aforesaid Act they are allowed to add to their former representatives[5]." Non-burgesses had, for a few years prior to 1693, been seeking election

[1] *Acts of the Scotch Parliaments*, IX. 152.
[2] *Acts of the Scotch Parliaments*, IX. 136.
[3] *Acts of the Scotch Parliaments*, IX. 152.
[4] *Acts of the Scotch Parliaments*, VII. 553.
[5] *Acts of the Scotch Parliaments*, IX. 237.

to Parliament from the burghs; but such instances were few and isolated; and, speaking generally, it may be affirmed that seats in the Scotch Parliament were not much coveted until the seventeenth century was at an end, and the Union with England was in sight.

Position of Burgh Corporations.

The second reason for the lack of similarity between the history of the Scotch and English municipalities is that from 1469 to 1707, and from 1707 to 1832, commissioners from burghs to Parliament were elected, not by popular vote, but by self-elected municipal councils. There were thus from 1469 to 1832 no opportunities for local contests for wider Parliamentary franchises; and the municipal corporations were generally so secure in their position under the Act of 1469, that it was not necessary for them to ally themselves with the burgesses. The municipal councils of the Scotch burghs could hold themselves aloof from the townspeople, as they wanted their help neither to maintain their hold on the municipal government, nor, after the Union, to aid them in controlling the election of members to the House of Commons.

Early Representation of the Burghs.

The attendance of commissioners from the burghs in the Scotch Parliament is dated by Innes from 1326, from the Parliament of Cambuskenneth, when the tithe penny to meet the expenses of the war was granted to Bruce "by the earls, barons, burgesses and free tenants in full parliament assembled[1]." From this Parliament Innes also dates the developement of "what are now considered the fundamental principles of a representative institution." The commissioners from the burghs were the only representative members of the Parliament of 1326. Nearly two centuries had yet to elapse before the freeholders, the men of the second estate, were at all generally represented by commissioners; and it is with respect to this period from 1326 to 1469 only that there can be any conjecture or speculation as to the mode in which the commissioners for the burghs were chosen. After 1469 there is an end to speculation; for whether the burghs represented in Parliament were few or many, their commissioners, if the law of 1469 were followed, were all chosen in the same way by the municipal councils. The councils were self-elected, and, with some aid from the trade guilds, chose not only the commissioners to Parliament, but the commissioners to the Convention of Royal Burghs, and all the municipal officers.

Burgh Franchise before 1469.

In 1833, when Parliament swept away the municipal oligarchies which had existed in Scotland for three centuries and a half, there

[1] *Acts of the Scotch Parliaments*, I. viii.

was embodied in the preamble of the Reform Act a statement which gave rise to some controversy in the House of Commons. "The right of electing the common councils and magistrates of the royal burghs of Scotland," it declares, "appears to have been originally in certain large classes of the inhabitants, by the abrogation of which ancient and wholesome usage much loss, inconvenience and discontent have been occasioned." It was then objected that it was next to impossible to substantiate the statement which was thus made as to municipal elections before 1469[1]. But while this objection was rightly taken, there is every ground for believing that, prior to 1469, there was some form of popular election in the Scotch burghs, and that the franchise then in existence was not unlike that created, or rather revived, by the Acts of 1689 for purging Dundee and Edinburgh of their honorary burgesses, and giving those burghs benches of magistrates elected by the burgesses at large[2]. By these Acts of 1689—passed for Edinburgh, Dundee, and several other burghs on which James VII had imposed honorary burgesses—all burgesses who had borne and did bear burgage duty were entitled to vote at the special elections. This was almost identical with the franchise of many English boroughs in the thirteenth and fourteenth centuries, before any irregularities or corruptions had worked their way into the Parliamentary electoral system; and the origin of the Scotch burghs is in the main so like that of the English boroughs[3], that there is ground for believing that between 1326 and 1469 the municipal councils and the commissioners to Parliament were chosen by the burgage-holders,—in other words by the inhabitant householders, who contributed to the charges of the burghs, and were liable to their turn for watch and ward[4].

Royal Burghs.

From the outset the Scotch burghs differed in one particular from most of the English boroughs. The original royal burghs uniformly held their lands, which were divided into burgage-holds, direct from the Crown. The individual burgage-owners generally held from the bailiffs of the burgh, who held the whole of the land in the burgh for the general community from the King[5].

[1] Cf. *Mirror of Parl.*, 1833, iv. 3729.

[2] Cf. *Mirror of Parl.*, 1833, iv. 3735.

[3] Cf. *Mirror of Parl.*, 1833, iv. 3729.

[4] Cf. Burton, *Hist. of Scotland*, ii. 72, 92, Second Edition; cf. Douglas, *Election Cases*, ii. 220.

[5] Cf. *Mirror of Parl.*, 1833, iii. 2574; Colston, *Incorporated Trades of Edinburgh*, xxi.

Outside the burghs, from the beginning of the Scotch Parliament, the freeholders holding from the King were liable to individual attendance in Parliament, until the system of representation from the shires was slowly developed; and the system of representation for the burghs long antedated that for the counties, doubtless for the reason that burgage-holders were too numerous and too poor to be called upon for individual attendance, as were freeholders in the shires. The fact also that the Convention of Royal Burghs came into existence before the burghs were represented in Parliament, would make the principle of representation easier of adoption than if no such institution had been in existence.

Burgh Customs.

Some characteristics of the early history of the English boroughs mark the history of the Scotch burghs. In the English boroughs a man who could prove that he had been free a year and a day, that during this period he had owned no man as his lord, became thereafter entitled to all the privileges of a freeman in the medieval sense of the term. In the Scotch burghs there was a similar custom. "If a slave buy burgage, and dwell thereon for a year and a day, unchallenged by his lord," reads the early Scotch burgh law, "he shall thereby become a free burgess[1]." Another of these laws laid down that two persons "could not have freedom of the burgh in respect of the same burgage[2]," a law resembling the usage in the English burgage boroughs which permitted of only one Parliamentary vote for each burgage. In the Scotch burghs also there was the same rule that prevailed in the English boroughs, that all burgesses should attend the borough mote. The law in Scotland was that "every burgess must attend the three principal mutes in the year[3]." These mutes corresponded to court leets in the English boroughs; and Burton affirms that at these mutes, "prior to the law of 1469, the magistrates were chosen in common consultation by the good men of the town, those who were leal and of good repute[4]."

Trade Privileges.

As trade developed in the Scotch burghs there were rules like those in the English boroughs as to admission to the privileges of trade. These survived to the Reform of 1833, at which time the charges for admission to the enjoyment of these

[1] *Leg. Burg.*, c. 15; *Acts of the Scotch Parliaments*, I. 335.
[2] *Acts of the Scotch Parliaments*, I. 721.
[3] *Leg. Burg.*, c. 40; *Acts of the Scotch Parliaments*, I. 340.
[4] Burton, *Hist. of Scotland*, II. 92.

privileges of trade ranged in different burghs from five shillings to twenty pounds[1].

Act of 1469.

The similarity between the conditions of burgh life in Scotland and in the English boroughs warrants the assumption that until 1469 the burgesses of the royal burghs, like the burgage-holders in England, had their part in municipal and Parliamentary elections; and the Act of the Scotch Parliament of 1469, by which elections were put in the hands of the municipal councils, contains evidence that before it came into force, elections were of a popular character. "In consequence of the great contentions which had arisen out of the elections of officers in burghs through multitude and clamour of the commons, simple people," reads the Act, "they ought henceforth to be excluded from the election." "For the reason aforesaid," it continues, "it is thought expedient that the old council should choose the new; and the new and the old councils together should choose all the officers, and ilk craft should choose a person who should have a vote in the election of its officers[2]." "Thus," to quote Lord Brougham's explanation of the Scotch Act of 1469, made to the House of Lords in 1833 when speaking on the second reading of the Scotch municipal reform bill, "the enactment was two-fold. It abolished the right of the burgesses at large to choose councils and officers, and vested that right in the existing and succeeding councils." "It appears from the Act," continued Brougham, in speaking of the way in which in later times it was interpreted and enforced by the burgh councils, "that the different incorporated trades, such as the butchers', weavers', and goldsmiths', had the right reserved to them of choosing one representative who went by the title of deacon; and certainly these deacons having the right to sit as councillors, the council claimed to choose the council deacons; but in the course of time a kind of compromise took place between the trades and the council, the consequence of which was a sort of mixed election, the council and the trades uniting in the choice of the deacons[3]."

Trade Guilds and Elections.

At what period the compromise described by Brougham was made cannot be determined. It was not universally adopted; and owing to local influences, the setts or constitutions of the royal burghs prior to their reform in 1833 "exhibited an almost endless

[1] Cf. *Mirror of Parl.*, 1833, III. 2574, 2575.

[2] Cf. *Acts of the Scotch Parliaments*, II. 95.

[3] *Mirror of Parl.*, 1833, IV. 3729.

variety in their details, agreeing, however, with scarcely an exception, in the principle of self-election[1]." The Act of 1469 applied uniformly to all the royal burghs. But the usurpation by the councils of the right of the trade guilds to choose deacons must have been gradual; and, like the endeavours of the English municipal corporations to secure the right to elect members to the House of Commons, it must have led to many local contests. The date when the councils of the royal burghs dispossessed the trade guilds of their right to unhampered election of council deacons must have varied in each burgh according to local conditions and the nature of the opposition. But the voice and votes of half-a-dozen independently elected council deacons must soon have become inconvenient and embarrassing to municipal councils chosen on the self-elective principle and already partially oligarchic, and with the power of these councils—with their ability to favour and reward the trade guilds which became subservient to them, and to hurt those which were disposed to take an independent line—it is not unreasonable to conclude that in most of the burghs the compromise with the trade guilds was arrived at long before Parliamentary elections were of consequence, and that when Scotland came into the Union the actual influence of the trade guilds was so small as to be almost a negligible quantity in most of the burghs which chose delegates to vote at the election of members to the House of Commons.

Convention of Royal Burghs and the Act of 1469.

A study of the developement of the Convention of Royal Burghs and its growing power from 1405 seems to justify the suggestion that if there existed minutes of the Convention from 1454, when it was authorised by Parliament to meet annually and when Parliament gave it jurisdiction over a comprehensive range of matters affecting the economy of the royal burghs, these minutes would show that the Act of 1469 had its origin with the Burgher Parliament. In the absence of such minutes previous to 1552, when the printed records begin, the impression that the Convention was responsible for the Act of 1469 receives much support from the circumstance that this memorable Act was confirmed and ratified by Parliament in 1487[2] at the same time that the Convention of Royal Burghs was empowered to compel "commissioners from all burghs, both south and north," to attend its sessions. The propinquity of these two Acts on the same page of the records of the

[1] Bell, *Dict. and Digest of the Law of Scotland*, 119.

[2] *Acts of the Scotch Parliaments*, II. 178.

Scotch Parliament—the first ratifying the Act of 1469, and the second making complete and inclusive the Convention of Royal Burghs—is almost sufficient to bring home to the Convention the responsibility for the Act of 1469, and the great and long-enduring effects which it wrought in the constitution of the royal burghs.

Aim of Act of 1469.

While responsibility for the Act of 1469 seems to attach to the Burgher Parliament, there is no room for the conjecture that the Act was passed with a view to Parliamentary elections. It must have been intended rather to meet what the burgh councils of the last half of the fifteenth century regarded as the exigencies of municipal politics. Nor can it be said that before 1700 this measure had the effect produced by corporation control of Parliamentary elections in the English boroughs. Such control in the Scotch burghs did not, until after the Union, bring into existence the borough patron, the neighbouring landowner who so absolutely controlled the borough that he could bequeath the right to elect, or bestow it as a marriage portion on a daughter. Nor until the eve of the Union did it bring into existence the non-resident member, the member of the type so increasingly common in the English boroughs from the beginning of the Stuart dynasty.

Its Effect on Burgh History.

From 1469 to the Union the representative history of the Scotch burghs, except as it is interwoven with that of the Convention of Royal Burghs, is uneventful. It is so from the fact that during these two hundred and thirty-eight years all the municipal councils were in possession of the right to elect the commissioners, while the laws of the Convention of Royal Burghs, from the earliest period of the representative system until within a few years of the Union, determined the qualifications of the burgh commissioners in Parliament, and from 1619 to the Union also fixed the number of commissioners to be elected by each burgh.

Number of Burgh Members.

From the time when the Parliamentary representative system was perfected in the middle years of the seventeenth century, and both the burghs and the counties were represented by commissioners, until the Union there was not much variation in the number of royal burghs entitled to representation in Parliament, although there were variations in the number of burghs which availed themselves of the right to elect. In 1597, before the Act perfecting county representation, there were forty-one

royal burghs[1]. By 1639 fifty-one burghs were sending commissioners[2]. In 1686 the number had increased to sixty-one[3]. It was not, however, until 1700 that the royal burghs sent all representatives to Parliament. From the time when Campbelltown came in in 1700 there were sixty-six burghs; and in the Parliament which passed the Act of Union all were represented[4]. Every one of them was subsequently incorporated in the remodelled system of burgh representation made necessary by the fact that only fifteen members were assigned to the burghs in the House of Commons of the United Kingdom.

Unenfranchised Burghs.

In view of the small value which was attached to a seat in the Scotch Parliament until 1693, it is not surprising that there is no evidence, until after 1690, of any efforts on the part of the lesser burghs, or of the nobility who might be supposed to be interested in these burghs, to secure their advancement to the station of royal burghs that they might send representatives to Parliament.

Three Classes of Burghs.

From the earliest times there were three groups of burghs—royal burghs, burghs of regality, and burghs of barony. Burghs of regality and of barony held their lands of some great lordship[5]; and, while each held in vassalage and not directly of the Crown, a regality burgh with the burghal community belonging to it was of a higher rank and swayed a greater power than the burgh of barony. The royal burghs, as of right, had a place in Parliament; but in more modern times, in the century or so which preceded the Union, there was no obstacle in the way of Parliament changing a burgh from the regality or barony class into that of royal burghs, or *vice versâ*. Royal burghs differed in their origin from burghs of regality or barony in that they held from the Crown. But differences in tenure were not insurmountable when a burgh made good its plea for advancement to the dignity of a royal burgh. Burntisland was so advanced in 1585[6]; and commissioners from Burntisland henceforward had places in "all parliaments, conventions, councils, and assemblies in which burghs had votes." Nor did the fact that a burgh was

[1] "Monipenny's Chronicle," *Somers Tracts*, III. 380.
[2] *Acts of the Scotch Parliaments*, V. 249.
[3] *Acts of the Scotch Parliaments*, VIII. 577.
[4] *Acts of the Scotch Parliaments*, XI. 302.
[5] Burton, II. 185.
[6] *Acts of the Scotch Parliaments*, III. 506.

of royal origin, or had been advanced to the dignity of a royal burgh, prevent Parliament from sanctioning its reduction to a burgh of regality. Kilrenny and Anstruther Wester both became burghs of regality in 1672, when they pleaded before Parliament that they were too poor to be ranked as royal burghs in the apportionment of national taxation, and to bear the charges of sending commissioners to Parliament and to the Convention of Royal Burghs.

Advancement of Burghs.

While as early as the sixteenth century it was possible by Act of Parliament to advance a burgh of regality or a burgh of barony into the class of royal burghs, and to give it a place in the third estate in Parliament, these advancements were but few. From the time when Burntisland was so dignified in 1585 until the Union, I have been able to discover only three other instances of similar advancement. Two of these, Kilrenny and Anstruther Wester, were cases in which there was a revival of old and not a bestowal of new dignity. The third instance was that of Campbelltown, which became a royal burgh in 1700. There is good reason for assuming that these three burghs were advanced with a view to their representation in Parliament and at the instance of interested landowners; for all three advancements were subsequent to 1690, when seats in Parliament were at last becoming prized. These are, however, the only instances in which it can be assumed that regality or barony burghs were advanced in dignity and political status because neighbouring landowners were interested in their representation in Parliament.

Obstacles to Advancement.

Had seats in the Scotch Parliament been in demand at an earlier period it would not have been as easy to secure representation for burghs as it was to bring about the enfranchisement of English boroughs. The Scotch Parliament might not have objected to these enfranchisements. It would obviously have been to the advantage of the Convention of Burghs to have supported them in and out of Parliament. But the burgesses might not have readily concurred; for a royal burgh had to contribute its quota to the sixth part of the national taxation; and, when once a burgh had been so advanced, it would have been compelled by law to send its delegates to the Convention of Royal Burghs, where its quota to national taxation would have been determined. In England no similar obligations accompanied borough Parliamentary representation, as the contribution of a borough to national taxation was in no way affected by the fact that it was

represented in the House of Commons, while the enfranchisement of a borough carried material advantages to the family which controlled its representation. It was not until the eve of the Union that the control of burgh representation carried with it any similar advantages to a landowner in Scotland; otherwise contests in Parliament like that in which Sir Patrick Murray was involved—when in 1681 he desired to represent Selkirk—would have occurred at a much earlier period.

Compelling Burgh Representation.

One fact which stands out in the history of the representation of the Scotch burghs is the effort of the Crown to compel them to send representatives to Parliament, and to associate the burghs in legislation affecting taxation and the larger affairs of the realm. In 1503, half a century after elections in burghs had ceased to be determined by popular vote, there was an enactment which declared that commissioners and headmen of burghs were to be warned to vote as one of the three estates, when tolls or contributions were granted[1]. Again in 1563 it was enacted by a Parliament—in which, the records show, there were only three representatives from burghs, and which had been preceded by a Parliament in which the burghs were altogether unrepresented[2]—that questions of peace or war and of taxation were not to be decided without "five or six of the principal provosts, aldermen, or bailies of burghs being warned to the Convention for concluding thereon[3]."

Difficulty in securing it.

Both these Acts suggest that there were difficulties in securing regular attendance on the part of the commissioners from burghs, a suggestion which is borne out by an examination of the lists of commissioners in attendance on the Parliaments until the early years of the seventeenth century. These lists vary so much in their numbers, and in some Parliaments are so attenuated, as to warrant the conclusion that if Parliament possessed such power of penalising burghs which did not regularly send commissioners as was possessed by the Convention of Royal Burghs from 1487, it was not effectively used. In 1609 there was a convention of estates at which Aberdeen, Ayr, Dundee, Edinburgh, Glasgow, Linlithgow, Perth, St Andrews, and Stirling were the only burghs represented[4]. As late as 1625 there was a Parliament in which

[1] Cf. *Acts of the Scotch Parliaments*, II. 252.
[2] *Official List*, pt. II. 534.
[3] *Acts of the Scotch Parliaments*, II. 543.
[4] *Official List*, pt. II. 548.

only twenty-five burghs were represented[1]; and not until 1693 did the number of commissioners from the royal burghs exceed fifty[2], although at this time the number of royal burghs was short only by three or four of the number at which it stood at the Union.

Guild Representation of Edinburgh.

The history of the burghs in the formative period of the Scotch representative system, before that system had become complete by the election of commissioners to represent the freeholders of counties, is marked by an attempt to establish what may be described as a system of labour representation in the Scotch Parliament. The experiment was made in Edinburgh, and was begun in 1584 after the ratification by Parliament of an arbitration between the merchants and craftsmen of Edinburgh. The question at issue had concerned the election of commissioners to Parliament, and the dispute preceding the arbitration may probably have arisen out of the part which the trade guilds were to have in municipal and Parliamentary elections under the Act of 1469. "It is thought good," reads a clause in this Act of ratification of 1584, under the heading "Item, as touching the Commissioners of Parliament," "that in all times coming one of the said commissioners for the burgh of Edinburgh shall be chosen by the said provost and bailies from of the number and calling of craftsmen and that to be one burgess and guild brother of the burgh, of the best, expert and wise, and of honest reputation[3]."

Craftsmen Members.

The municipal council of Edinburgh by this Act of 1584 was clearly given the right to elect the Parliamentary commissioners, but it was specifically stated that one of these commissioners was to be from the craftsmen, who in all other burghs were excluded by the Act of the Convention of Royal Burghs. In subsequent Parliaments from 1584 to the Union Edinburgh was represented by two commissioners. From 1584 to 1592, however, there is no conclusive proof in the official returns that the agreement and the Act of 1584 were carried out. In the Parliament of 1592 Edinburgh was represented by William Litle, provost, and George Hereot, goldsmith; and as Hereot was of the Parliament of 1585, the first after the agreement of 1584, although he is not described in the Official List as a goldsmith, it may be inferred that his

[1] *Official List*, pt. II. 554.

[2] *Official List*, pt. II. 558.

[3] *Acts of the Scotch Parliaments*, III. 363; cf. *Records of the Burgh of Edinburgh*, 265–276.

election in 1585, and to many subsequent Parliaments between 1585 and 1607[1], was in pursuance of the agreement of 1584 that one of the Edinburgh commissioners should be "a guild brother of the burgh, of the best, expert and wise, and of honest reputation." Only very occasionally is the status of the commissioners for Edinburgh described in the official returns. But in the first Parliament of Charles I, from 1628 to 1633, Edinburgh was again represented by a commissioner who is officially set down as a goldsmith[2]. In the Parliament of 1639–41, one of the commissioners, Richard Maxwell, was "deacon of the hammermen[3]." Maxwell must have been a near approximation to the leaders of trade unions who have been of the House of Commons in small but increasing numbers since 1874, when Mr Thomas Burt, secretary of the Northumberland Miners' Mutual Association, was returned as member for Morpeth[4], and the late Mr Alexander Macdonald, from 1863 to 1881 president of the National Union of Miners, was chosen for Stafford[5].

A Century of Labour Representation.

In the first Parliament of Scotland after the Restoration one of the Edinburgh commissioners was "deacon of the chirurgeons." In two succeeding Parliaments, those of 1665 and 1667, Edinburgh was represented by a skinner. In the Parliament of 1669–74 one of its representatives was a chirurgeon. In 1678 the deacon of the goldsmiths was one of the commissioners. In 1681 Edinburgh was again represented by a goldsmith; and again in the Convention of 1689 by a chirurgeon. In the Parliament of 1689–1702 Alexander Thomson, deacon-convener of the hammermen, succeeded to the commission which George Stirling, late deacon of the chirurgeons, had held in the Convention of 1689; while in the last of the Scotch Parliaments, that of 1703–7, as in the first after the agreement and Act of 1584, Edinburgh was represented by a goldsmith. For more than a century Edinburgh, by virtue of a special Act, was thus represented in Parliament by men who may not inaptly be described as labour representatives. The members of the goldsmiths' guild, who were of the Parliament between 1584 and the Union, were

[1] Cf. *Official List*, pt. II. 534, 547.

[2] *Official List*, pt. II. 555.

[3] *Official List*, pt. II. 559.

[4] Dodd, *Parl. Companion*, 196, Ed. 1889.

[5] Cf. McCalmont, *Parl. Poll Book*, 274, Ed. 1895; Webb, *Hist. Trade Unionism*, 285.

not of the craftsman class in social status; for when Hereot was of the Parliament the goldsmiths' art was "carried on upon a scale which raised its practitioners to the guild of merchants[1]." But it was as members of the goldsmiths' craft that George Hereot and his successors from the goldsmiths' guild were chosen as commissioners for Edinburgh; while as for the other craftsmen, "the trades of Edinburgh in these days were generally conducted by men of small account[2]," and the hammermen who were chosen commissioners must surely have been craftsmen in the modern acceptance of the term.

It ceases at the Union.

Direct representation of the trades in the Scotch Parliament was peculiar to Edinburgh, and gives its Parliamentary history a distinction which attaches to no other Parliamentary constituency, either in Scotland or England, before or after the Union. After the Union, when Edinburgh had only one representative in Parliament, an attempt was made to continue the custom established under the Act of the reign of James VI. When there was only one member to be chosen the craftsmen insisted that the merchants should choose at one election and the craftsmen at the next. In the second Parliament of the United Kingdom Sir Patrick Johnstoun, the provost, represented Edinburgh, having been chosen at a by-election on the 25th of November, 1709, in the place of Sir Samuel McClellan, also provost, who was the first elected representative of Edinburgh after the Union. At the election in October, 1710, the second general election after the Union, Sir Patrick Johnstoun was again returned[3]. Johnstoun was a merchant, and after his second election there was a petition against his return on the ground that it was the turn of the craftsmen to choose the representative to Parliament. For the petitioner the agreement and the Act of James VI were cited. It was proved that a merchant and a craftsman had always been chosen up to the Union; and it was contended that, because the merchants and craftsmen of Edinburgh before the Union were distinctly represented, "they ought still to be so, by electing a merchant and a tradesman by turns." The arrangement existing before the Union was admitted by counsel for Sir Patrick Johnstoun. It was contended, however, that the Act of Union

[1] Chambers, *Edinburgh Merchants and Merchandise in Olden Times*, 7.

[2] Chambers, *Edinburgh Merchants and Merchandise in Olden Times*, 8.

[3] *Official List*, pt. II. 16, 27.

had repealed the law of James VI, and in consequence, as there was now but one member, the electors were left free and at liberty to choose whom they pleased. The House of Commons took this view. Sir Patrick Johnstoun was seated, and the representation of the craftsmen of Edinburgh thus came to an end in 1711 by resolution of the House of Commons[1].

[1] Douglas, *Election Cases*, II. 211.

# CHAPTER XXXV.

## THE FRANCHISE IN THE COUNTIES.

County Representation in 1681.

In 1707, when the Parliament of Scotland undertook the remodelling of the electoral system, thirty-three counties or stewartries were represented by commissioners. The representation of the counties was then complete. It had been so only since the Parliament of 1681, which was the first in which all the shires of Scotland were represented[1]. After 1681 there were additions to the number of commissioners representing the shires. Twenty-six were added by the Act of 1690 and by that of 1693 enforcing obedience on the part of freeholders to the Act of 1690. But in 1681 all the shires were represented by commissioners; and from 1681 may be dated the time when the representative system of Scotland reached the level of completeness on which it stood at the Union.

Difficulty in building up the System.

Efforts to this end had been made as early as 1427[2]; and on the statute books of Scotland there are many enactments which, taken in conjunction with the official returns, show how difficult and slow was the process of building up the representation of the second estate in Parliament. Much effort was necessary to perfect the representation of the burghs. Much more was needful to bring the representation of the shires to the completeness which marked it in the closing years of the reign of Charles II; and it did not become even approximately complete until after an Act was passed in 1661 for enlarging the county electorate.

Personal Service in Parliament.

Before the Act of 1427 all men who held their lands directly of the Crown, small freeholders as well as great nobles, owed suit and service in the court of their feudal superior. They were all under

[1] Cf. *Official List*, pt. II. 584.

[2] Cf. *Acts of the Scotch Parliaments*, II. 15.

obligation to give attendance in Parliament; and in order to evade this service there grew up the custom of sending substitutes or procurators. To discourage this custom an Act was passed in 1425 which ordered that earls, barons, and freeholders should appear in person and not by procurator, unless they had a lawful excuse. This Act failed of its purpose so obviously and so quickly that in 1427 there was passed the first of the series of Acts, the aim of which was to establish a system of representation in counties similar to that which can be traced as existing in the burghs from 1326.

Creating a Representative System.

The Act of 1427 excused the small barons and free tenants from attending on Parliament, provided that they sent two or more commissioners from each sheriffdom. The number to be sent was to be determined by the size of the county. Nothing can be learned of any electoral machinery set up by this Act of 1427. The Act, however, was passed soon after the return of James I from England, and was evidently framed for the purpose of establishing in Scotland a system of county representation similar to that which at this time was working well in England[1]. The small barons and freeholders were directed to elect "twa or ma wismen[2]." But the Act was not obeyed; no representatives were returned to Parliament under its provisions[3]; and as the small barons and free tenants, in consequence of this failure to avail themselves of the new law, were still liable to individual attendance in Parliament, between 1427 and 1567 Acts were passed for their relief—Acts which "successively raised the maximum below which small barons and free tenants should not be obliged to give personal suit and presence in Parliament[4]." There were two of these relief Acts: one in 1457 and the other in 1503. By the first of them it was enacted that no freeholder holding land valued below twenty pounds should be constrained to come to Parliament "as for presence," unless he were a baron, or were specially summoned[5]. "Vassals holding their lands directly of the Crown," wrote Sir Charles Elphinstone Adam, in explaining this statute of 1457, "may be termed indifferently barons or freeholders; but in the statute the appellation baron is used in a more restricted sense,

[1] Cf. *Acts of the Scotch Parliaments*, I. xi.
[2] *Acts of the Scotch Parliaments*, II. 15.
[3] *Acts of the Scotch Parliaments*, I. xi.
[4] *Acts of the Scotch Parliaments*, I. xi.
[5] *Acts of the Scotch Parliaments*, II. 50.

and denotes one whose lands had been erected into a free barony, which erection had no relation to the peerage, and who exercised a civil and criminal jurisdiction, which the ordinary freeholder did not enjoy[1]."

The Lesser Barons.

By the second of these Acts, that of 1503, all barons and freeholders whose estates were within one hundred marks of new extent, a mode of assessment dating from 1474, were relieved from personal attendance unless the King wrote especially for them; and they were not to be unlawed provided they sent their "procurators to answer for them with baronnes of the shire or the maist famous persons[2]." These Acts were little regarded by the lesser barons; and during the reigns of James IV, James V, and Mary, they attended Parliament in but small numbers, or not at all. There are no records of their attendances in the Official List until 1590; and the editor of the Scotch lists, in remarking on the first appearance of the names of small barons, states that the minor barons or lairds, for three-quarters of a century prior to 1590, "seem to have been almost entirely absent from the Parliaments[3]."

The Act of 1567.

Between 1567 and 1587 there were three more enactments on the lines of that of 1427. All were passed with a view to compelling the small barons and frecholders to elect commissioners to represent them in Parliament; and from these three Acts of the last half of the sixteenth century must be dated the beginnings of the system which became complete in 1681, when for the first time every shire or stewartry sent commissioners to Parliament. The Act of 1427, which seems to have been permissive, so far as can be discovered set up no machinery for the election of the "twa or ma wismen" whom the barons were directed to choose. There was no such omission in the Act of 1567[4]. It ordered that precepts should be directed out of the Chancellorie to one baron of each shire for choosing commissioners, who were to be "two wise men, being the King's freeholders, resident in-dwelling, of good rent and well esteemed"; and thereby were established the property and residential qualifications for commissioners of shires. The residential qualification survived until 1669, and the landed qualification continued after the Union, and even after the Act for Parliamentary Reform in 1832.

[1] Adam, *View of the Political State of Scotland in the Last Century*, xiii.

[2] *Acts of the Scotch Parliaments*, II. 244, 252.

[3] *Official List*, pt. II. 539.

[4] *Acts of the Scotch Parliaments*, II. 15.

Qualifications of Electors.

The second Act in this series, which was passed in 1585, threw responsibility for elections on the freeholders, for it directed that all freeholders under the King, below the degree of prelates and lords of Parliament, all who were not of the first estate, "should be warned by open proclamation to be present at the choosing" of commissioners for the shires; and decreed that none were to have votes at these elections, but such as had land of the value of forty shillings, free tenantry, holding of the King, "and had their actual dwelling and residence within the same shire[1]." By this Act there was established the residential qualification for electors which, like the qualification for commissioners of the shires, survived until 1669, when by Act of Parliament these laws of 1567 and 1585, making residence within the county necessary as a qualification both for electors and elected, were abrogated[2].

The Act of 1587.

The third of this series of enactments of the last half of the sixteenth century was passed in 1587. Its purpose was to perfect the electoral machinery; to provide for wages for commissioners for shires; and to determine more clearly the status in Parliament of commissioners for the shires. It directed that commissioners were to be elected at the first headcourt of the shire after Michaelmas each year; that the names of the commissioners then chosen were to be notified each year to the chancellor; and that when a Parliament was to be holden the commissioners were to be warned to attend. Furthermore, this Act of 1587 directed that all freeholders were to be "taxt for the expenses of the commissioners of the shire passing to Parliament or general council," and that the commissioners should be equal "with the commissioners of burghs on the Articles, and have votes[3]."

The Committees of Articles.

The Committee of Articles, in the election of which and on which the commissioners of shires were by the Act of 1587 to have equality with the commissioners of burghs, had at this time been in existence for more than two hundred years. It dated from the Parliament held at Scone in 1367, when certain persons were chosen to hold the Parliament, and permission was given to the rest to return home, and attend to their own affairs. In 1368 there was a Parliament at Perth, when the three estates, the nobility, the barons, and the commissioners from the burghs, on account of "the inconvenience of the season and the dearness of provisions," elected

[1] *Acts of the Scotch Parliaments*, III. 422.
[2] *Acts of the Scotch Parliaments*, VIII. 553.
[3] *Acts of the Scotch Parliaments*, III. 510.

certain persons "to hold the Parliament." These were divided into two bodies. One was to treat of the general affairs of the king and the kingdom: and the other, a smaller committee, was to sit on appeals from inferior courts[1]. At the next Parliament, held also at Perth, in 1369, these two committees were again appointed, the one to deal with appeals, pleas, and complaints: and the other "to treat and deliberate on certain special and secret affairs of the king and kingdom," previous to their being brought before the whole Parliament[2]. At Perth in 1368 the justification for these committees was the inconvenience of the season and the dearness of provisions. No such reason was advanced for the reappointment of the more important committee in 1369. Then the reasons were that it was "not expedient that the whole body should assist at deliberations of that kind," deliberations on "certain special and secret affairs," nor "be kept in attendance[3]."

Its History.

In these committees of 1367, 1368, and 1369, originated the Committee of Articles, which afterwards became an essential and remarkable part of the constitution of Parliament; and also the Judicial Committee, which, under various forms and regulations, became in like manner a permanent institution, and culminated in the establishment of a separate and supreme court of justice in 1532[4]. The Committee of Articles survived until the Revolution. It was abolished in the first Parliament of William and Mary, as it had formed the first subject of the articles of grievance presented by the estates after the Revolution[5]. After the system of representation became complete, the records of Parliament show how the Committee of Articles was sometimes chosen. Each of the estates withdrew from the Parliament Chamber, and chose its representatives on the Committee of Articles. The mode of choice of the Committee was not the same all through the history of the Scotch Parliament; but no matter by what method the Committee was chosen the choice, whether open or arbitrary, was little more than a form; for Innes asserts that in the "later and worse times of the Scottish constitution, the devices of the politicians threw it entirely in the hands of the Government[6]."

[1] *Acts of the Scotch Parliaments*, I. x., xi.
[2] *Acts of the Scotch Parliaments*, I. xi.
[3] *Acts of the Scotch Parliaments*, I. xi.
[4] *Acts of the Scotch Parliaments*, I. xi.
[5] *Acts of the Scotch Parliaments*, I. xi.
[6] *Acts of the Scotch Parliaments*, I. xi.

The Minor Barons in Parliament.

How the Acts of 1567, 1585, and 1587 worked towards the establishment of a system of county representation is told by the editor of the official lists of the commissioners to the Scotch Parliaments, in a footnote to the first list of small barons which appears in the official record after these Acts had been passed, the six small barons in attendance on the Convention of Estates, held at Holyrood House, on the 12th of June, 1590. "The minor barons or lairds," runs the footnote, "who for three-quarters of a century before this time seem to have been almost entirely absent from the Parliament, having begun to reappear there immediately after the passing of the Act of 1587, which imposed on them the obligation to elect representatives, are found also soon after in gradually increasing numbers in the rolls of the Conventions of Estates. For a time, probably, most of those who are found there, sat as Privy Councillors, the Council being very numerous till its numbers were limited by the Convention in December, 1598. It is, however, difficult to distinguish between those who sat in this capacity, and those who may have represented constituencies; and, as it is possible that in almost every roll some of the latter class may occur, or indeed that most of them may have had the double qualification, it has been thought proper, with this explanation, to give, in the following pages, the names of all the minor barons, not being officers of state, who are found in the sederunts of the Convention between this date and 1608, when the commissioners for shires are first clearly distinguished, and their constituencies named[1]."

Frequency of Parliaments.

Conventions of the Estates at this period of Scotch history were very frequent. There were thirty-eight Conventions or Parliaments between 1590, when the names of small barons first appeared in the official lists, and the Convention held at Edinburgh on the 20th of May, 1608, in the lists of which commissioners for shires are first clearly distinguished and their constituencies named[2]. Conventions of the Estates were in this period summoned upon particular emergencies, or when supplies were urgently needed. There was no formal citation of the members of the Estates; but the King called together those who were at hand, and their powers were confined to the special business for which they were summoned[3]. In the period between the Act of 1587 and the Parliament

[1] *Official List*, pt. II. 539.

[2] *Official List*, pt. II. 535–548.

[3] Cf. Adam, *View of the Political State of Scotland in the Last Century*, xv.

of 1608, in which the barons are first distinguished in the Official List by the shires they represented, there were sometimes as many as three or four Conventions in one year. The sessions were very short; and the frequency of the Conventions, and the manner of calling them, must have told against the upbuilding of a comprehensive representative system such as existed in England at the same period.

The Three Estates in Parliament.

From 1590 to 1608 the attendance of barons ranged from two in 1591 to nineteen in 1593, 1599, and 1605. The number of commissioners of shires did not exceed twenty until 1609, when the barons numbered twenty-one. With respect to the next Parliament in 1612, the details as to shire and burgh representation are fuller. The dates of election are now given in the rolls; and the Official List shows that to this Parliament seventeen shires elected commissioners, and that of these shires all but three were represented by two commissioners[1]. No commissioners were chosen to represent the five shires of Ayr, Dumfries, Inverness, Renfrew, and Wigton, but the burghs were represented. In this Parliament of 1612 there were thus shire or burgh commissioners from twenty-two counties; so that early in the second decade of the seventeenth century, the representative system had definitely taken on the form in which it continued till the Union; and not until within a hundred years of the Union can it be asserted that Scotland had an electoral system which, even in its main outlines, corresponded to the system of county and borough representation of England and Wales.

First Extension of the Franchise.

At this time the electors of commissioners from the shires had still to be freeholders of the Crown, and none could be chosen as commissioners who did not hold from the Crown, and were not dwelling in the shires which they were chosen to represent. For nearly forty years after the representative system had been developed to the point of completeness which it reached in 1612, no other class of freeholders was brought within the electorate. The first extension of the franchise beyond the forty-shilling freeholders of the Crown was in 1661; and it seems from the preamble of the Act to have been due to the desire of freeholders, not coming within the terms of the sixteenth century legislation, to take part in elections and to be chosen to Parliament. The preamble of the Act declares that there had been divers debates as to who ought

[1] *Official List*, pt. II. 549.

to have votes, and who were capable of being elected. Among whom these contentions had arisen is shown by the new class to whom the county franchise was now extended. Besides heritors who held land to the value of forty shillings from the king *in capite*, the franchise was to be conferred on all heritors, life renters, and wadsetters[1], holding of the king, and others "who held their lands formerly of the bishops or abbotts, and now hold of the king, and whose yearly rent doth amount to ten chalder of victuals[2]"; and these holders of lands were also to be capable of being elected commissioners of shires[3].

Vassals of Subject Superiors.

Noblemen and their vassals were excluded by this Act of 1661. At a subsequent period this exclusion broke down in at least one county. Nearly the whole of the County of Sutherland was held by the Earls of Sutherland; and the Act of 1661, if rigidly adhered to, would practically have disfranchised that county. But at least as early as 1639 the Earl of Sutherland's vassals had secured for themselves the privilege of electing and being elected[4], which in other counties was possessed only by the duly qualified vassals of the Crown. The vassals of subject superiors in other counties also acquired the same privilege. Until 1743, these rights of men in Sutherland not vassals of the Crown had only usage to support them. In 1743, however, by one of the few Acts[5] affecting the Scotch electoral system which were passed after the Union, statutory force was given to a privilege acquired by usage, and it was provided that in the case of these vassals a qualification might be constituted by two hundred pounds scots of valued rent, instead of four hundred pounds as in other counties[6].

The Act of 1681.

Between the Act of 1661, which extended the right of election to freeholders in possession of land formerly held of the bishops and the abbots, and the Union, there was only one measure which had for its object the admission of new county electors. This measure, which perfected the representative system so far as the electors were concerned, was passed in 1681[7]. It declared that "none shall have votes in the election of commissioners for shires

[1] Old Scotch equivalent for "mortgagee."
[2] Any sort of grain or corn.
[3] *Acts of the Scotch Parliaments*, VII. 235.
[4] *Acts of the Scotch Parliaments*, V. 252.
[5] 16 Geo. II, c. 11.
[6] Adam, *Political State of Scotland*, xxviii.
[7] *Acts of the Scotch Parliaments*, VIII. 353.

or stewartries which shall have been in use to be represented in Parliaments and Conventions, but those who at that time shall be publicly infeft[1] in property or superiority, and in possession of a forty-shilling land of old extent, holden of the king or prince, distinct from the few duties in few lands; or where the old extent appears not, shall be infeft in lands, liable to public burden for his majesty's supplies for four hundred pounds of valued rent, whether kirk land now holden of the king or prince of Scotland."

Electors holding of the Prince.

For the first time in the history of the Scotch county representation a tax-paying qualification was now established by an Act dealing with the franchise; for in the Acts of 1567, 1585, 1587, and 1661 there are no specific references to contributions to national burdens as a qualification for the county franchise. As far back as the beginning of the fourteenth century the term "old extent" had been used in connection with county economy, and a forty-shilling land of old extent would represent land of the value of about a hundred pounds at the present time[2]. The inclusion of lands held of the prince in the Act of 1681 did not necessarily enlarge the electorate. These lands lay mostly in Ayr, Renfrew, and Ross, shires which were all represented in the Parliament which passed the Act of 1681, and had been so represented since the last Parliament of James VI[3], although these shires had failed to elect commissioners to the Parliament of 1612, the first in which both the burghs and shires can be said to have been generally represented[4]. The omission on the part of Ayr, Renfrew, and Ross to elect commissioners may probably have arisen from doubt as to whether their lands came within the description of lands holden from the King, as, since the reign of Robert III, the Crown lands in these three counties had been erected into a principality for the King's eldest son, the Prince of Scotland[5]. Judging from the official returns, the prince's vassals had been electing commissioners from 1617[6]; and the Act of 1681, so far as these electors were concerned, probably only confirmed a right which they had been exercising for more than sixty years.

[1] "Infeffment," the formal act of giving possession of feudal property.

[2] Cf. Lambert, "Parliamentary Franchises, Past and Present," *Nineteenth Century*, December, 1889, pp. 948–9.

[3] Cf. *Official List*, pt. II. 553.

[4] *Official List*, pt. II. 549, 550.

[5] Cf. Adam, *Political State of Scotland*, xv.

[6] *Official List*, pt. II. 550.

Further Extensions of the Franchise.

At the time the Act of 1681 was passed trustees and mortgagees in England were voting with the county electorate. Mortgagees in Scotland had obtained this right by the Act of 1661. By the Act of 1681 it was extended to appraisers or adjudgers, that is to creditors to whom the lands of debtors had been adjudged as security for debts, and who were holding them after the expiry of the period during which the debtors might redeem their property[1]. The right was also extended by this Act of 1681 to "proper wadsetters"; to apparent heirs, that is to persons whose predecessors were dead, and who, though in possession of the predecessor's estate by virtue of the predecessor's infeffment, had not formally completed their title to the property; to life renters; and to husbands in right of their wives' freeholds, or of their own life-rent by courtesy. This extension of the franchise to owners of life-rents by courtesy gave the franchise to widowers, who were in the enjoyment of the heritage in which their wives had died infeft provided a child, the mother's heir, had been born alive of the marriage[2].

Franchise valued.

These clauses in the Act of 1681 can have added but few new voters to the county electors. But they have their interest as showing that by 1681 a county vote was becoming valued, and that in Scotland as in England recognition was now being given by the legislature to indirect claims to the franchise. Indirect claims must have been pressed in Scotland earlier than 1681 or these various provisions would not have been embodied in this enactment, which, with the Act of 1690 adding twenty-six commissioners to the representation of the shires, placed the county electoral system on the basis on which it stood at the Union, and on which after the introduction of an improved system of registration in 1743 it remained until the Reform Act of 1832.

Wadsetters.

Of the voters who in 1681 were brought into the electoral system one class had disappeared long before 1832, and it is the only instance during the existence of the Unreformed House of Commons in which a class which had once become possessed of the franchise, either in Scotland or England, entirely disappeared. These seventeenth and early eighteenth century voters, who were not of the electoral system in 1832, were the wadsetters, men who for generations prior to the middle years of the eighteenth

[1] Adam, *Political State of Scotland*, xvi.

[2] Cf. Adam, *Political State of Scotland*, xxii.

century had an important place in the economy of Scotland. Before commerce became well developed in Scotland, and before banks were established, almost the only way of raising money was by the impignoration of land, and the mode of paying the debt was by authorising the lender to collect the rents. A man who advanced money on these conditions was known as a wadsetter; and two classes of wadsetters were recognized by the laws of Scotland. If the lender received the rents of the land "unaccountably" as the phrase was, that is when he was to trust to the rents for his interest, to enjoy the benefit if they exceeded the regular interest, and to suffer the loss if they fell short, paying the public burdens at the same time, then his estate was called a proper wadset. If, on the other hand, the lender was to account for the rents to the borrower, and deduct only his regular interest when there was an excess, or receive what was necessary to make it up when there was a deficit, then his estate was an improper wadset.

Their Electoral Rights.

In 1681 and even in the early years of the eighteenth century much property in Scotland, especially in the Highlands, was held in the form of wadsets; and as proper wadsetters, while the estates continued in their hands, were for all practical purposes the owners of the land, it was deemed just to admit them instead of the reversers to vote for commissioners of the shires. The proper wadsetter was again recognized as a county voter by an Act passed in the twelfth year of Queen Anne. But at this time he was disappearing, and as the modern methods of raising and loaning money came into use the wadsetter was superseded. After his disappearance an attempt was made to qualify as wadsetters, under the Acts of 1681 and 1712, men who had advanced money on naked superiorities—superiorities to which no possession of land attached and whose only value was as electoral qualifications[1].

Number of County Voters.

With the holding of land of the Crown as the general foundation of the Scotch county franchise, it was impossible that the five enactments intended to build up this part of the representative system,—the Acts of 1567, 1585, 1587, 1661, and 1681,—could bring into existence a large electorate. How many county voters there were in Scotland at the Union can be a matter of estimate only. The sole basis for such an estimate that I have found is the number in 1788. Then, after eighty

[1] Cf. Douglas, *Election Cases*, iv. 198–203.

years of faggot-vote making, a practice which was in vogue as soon after the Union as 1708–9[1], and to check which there was legislation in 1712[2] and again in 1743[3], the total number of electors in the thirty-three shires of Scotland was 2631[4]. In the detailed and carefully prepared statements concerning the county electorate which were compiled for the use of the Whig organisers, William Adam and Henry Erskine, in 1788, there is no computation of the number of faggot voters. But at the beginning of the nineteenth century the number of such voters was estimated at twelve hundred[5]; and it may be concluded that the increases in the county electorate between the Union and the end of the eighteenth century were due to the creation of fictitious qualifications rather than to subdivisions of land in the ordinary economy of land holding; for under the Scotch land and electoral systems it was possible for an owner to sell parcels of his land without permitting the new owners to obtain a right to the franchise. A landowner could part with all his land and retain the superiority, which carried the right to the vote.

Redistribution at the Revolution.

From the Act passed in 1681 extending the county franchise, until the Union, the legislation affecting county representation concerned only the distribution of electoral power. In the Parliament of 1681 thirty-three counties were represented; and all except seven, the shires of Berwick, Caithness, Clackmannan, Cromarty, Kinross, Kirkcudbright, and Orkney and Shetland, were represented by two commissioners each[6]. Before the Revolution this distribution had come to be regarded as unsatisfactory. The more populous shires considered themselves inadequately represented; and in 1689, when the Estates assembled in convention, a convention called without the usual royal summons, they agreed on a Claim of Right and also on Articles of Grievances. Three measures of Parliamentary reform were suggested in the Articles of Grievances; and the Claim of Right and the Articles of Grievances were submitted to William and Mary when the offer of the Crown of Scotland was made to them. The Claim of Right defined what was offered to William in the Crown of Scotland. The Articles of Grievances set forth certain reforms in

[1] Cf. *Somers Tracts*, xii. 627, 628.
[2] 12 Anne, c. 6. [3] 7 Geo. II, c. 16.
[4] Cf. Adam, *Political State of Scotland*, 17–345.
[5] Cf. Adam, *Political State of Scotland*, v.
[6] *Official List*, pt. ii. 584.

which it was desired that the new monarch should co-operate with the Estates[1].

The Parliamentary reforms which were demanded were the abolition of the Committee on the Articles; a redistribution of electoral power; and the remedying of the grievances of the burghs, arising out of the manipulation of their constitutions in the reign of James VII. The Articles of Grievances were first adopted on 13th of April, 1689; and as they stood at the end of the sitting of that day they contained, so far as Parliament and its constitution were concerned, only the expression of the desire of the Estates for the abolition of the Committee on the Articles. "The Estates of the Kingdom of Scotland," reads this clause in the Articles of Grievances, "do represent that the Committee of Parliament called the Articles is a great grievance to the nation, and that there ought not to be any committees of Parliament, but such as are freely chosen by the Estates, to prepare motions and overtures that are made in the House[2]." On the 24th of April the Convention added two desires, both having reference to the electoral system. These were "that all grievances relating to the manner and measure of the lieges, their representation in Parliament, be considered and redressed in the first Parliament"; and "that the grievances of the burghs be considered and redressed in the first Parliament[3]." Reforms suggested.

In the letter from the Convention of Estates, containing the offer of the Scotch Crown to William and Mary, it was stated that commissioners were "humbly to represent the Petition, or Claim of Right, of the subjects of this kingdom." As to the Articles of Grievances, the commissioners were instructed "to represent some things found grievances to this nation which we humbly entreat Your Majesty to remedy by wholesome laws in your first Parliament." Three commissioners were sent to London to convey with due ceremony the offer of the Crown. They were the Earl of Argyll, Sir James Montgomery of Skelmorlie, and Sir John Dalrymple; one from each of the three estates, the peers, the barons, and the burgesses. They were instructed to read the Declaration of Right to the King and Queen, or to see it read; and to present to the King the Articles of Grievances. After the King and Queen had taken the oath, the King referred William III and the Articles of Grievances.

[1] Burton, VII. 285.

[2] *Acts of the Scotch Parliaments*, IX. 44.

[3] *Acts of the Scotch Parliaments*, IX. 61.

to the Claim of Right and the Articles of Grievances, "and without any specific comment on their tenour, he attested the readiness of the Queen and himself to protect the Estates, and assist them in making such laws as should secure their religion, liberties, and properties, and prevent or redress whatever might be justly grievous[1]."

First Grievance.

The grievances of the Scotch burghs, in so far as they arose out of the introduction of honorary burgesses, and the other corruptions introduced in the reign of James VII, were of but recent origin. The unequal distribution of electoral power was also not a grievance of long standing. But the Committee on the Articles was a grievance which must have antedated the time when the Scotch electoral system was perfected at the close of the sixteenth and the opening of the seventeenth century, when both the burghs and the shires were represented in Parliament by elected commissioners, and when individual attendance on the part of the barons, or King's freeholders, was at an end by enactment. The existence of this Committee, which can be traced back to the Parliament of Scone of 1367, manipulated as it was all through the seventeenth century in the interest of the Crown, must have been inimical to a real system of Parliamentary representation and Parliamentary government. It must have been an even greater power in the hands of the Crown, and one much more easily wielded, than was the representation of the decayed or corrupt English boroughs, which put such large powers in the possession of George III.

Grievances redressed.

King William kept his promises to the Scotch commissioners fully if not willingly; and in the session of the Scotch Parliament of 1690 an end was made to the Committee on the Articles; honorary burgesses were eliminated from the burghs by measures which have already been cited; and there was also a redistribution Act for the counties.

Redistribution recommended.

Legislation to bring about these electoral reforms was commanded in the letter of instructions from the King "to our right trusty and right entirely beloved cousin, William, Duke of Hamilton, our Commissioner for holding the first session of our next ensuing Parliament of our ancient Kingdom of Scotland." "You are to pass," reads the instruction as to the redistribution measure, "an Act that the greater shires of that kingdom, such

[1] Cf. Burton, VII. 294, 295.

as Lanark and others, where it shall be found convenient, may send three or four commissioners to Parliament that the representation may be more equal[1]."

Debating the Committee on Articles.

The letter of the King to the Duke of Hamilton was dated May 31st, 1689. The Convention became a Parliament on the 5th of June; but the session, which lasted from June 5th to August 2nd, was chiefly occupied with contentions over the Committee on the Articles. The King was not disposed to abolish the Committee. Hamilton, acting for the King, proposed that in future the Lords of the Articles should consist of twenty-four persons, eight chosen freely from each estate; and that while this body, as of old, was to transact the legislative business committed to it there was to be a remedy by motion in full Parliament against its absolute rejection of any measure laid before it[2]. Much opposition was offered to this proposal—opposition sufficiently strong to carry amendments that each estate should elect its own representatives on the Committee, and that the officers of State who were of the Parliament but represented no constituencies should not be members of Committees unless they were so elected. This provision would have made it impossible for the officers of State to secure election, for they were not grouped with any of the three estates, and each estate would have desired members of its own as its delegation. Hamilton then intimated to Parliament, that, as the amended measure did not agree with his instructions from the King, he would not give it the royal concurrence without communicating with his Majesty[3]. This intimation was made on the 25th of June. Three days earlier, on the 22nd of June, Hamilton reported to the King that Parliament had voted "a constant committee to be a grievance, and that all committees should be chosen by the whole"; and after the adjournment on the 25th he sought advice from the King, and informed him of the apprehension "of the Parliament and nation lest the Government returns to the old channel so often complained of to the King." To this letter the King replied on the 4th of July. He regretted that the question had come to a vote, and suggested a compromise[4]. On the 9th and 10th of July Parliament was again engaged with the question of the

[1] *Acts of the Scotch Parliaments*, IX. 125, 126.

[2] Cf. *Acts of the Scotch Parliaments*, IX. 128; Burton, VII. 332.

[3] Burton, VII. 333.

[4] *Hist. MSS. Comm. 11th Rep.*, App., pt. VI. 177.

Committee on the Articles; and Hamilton offered a compromise. Under his plan the Lords of Articles were to be increased from twenty-four to thirty-three, and each estate was to choose eleven. But Parliament was obdurate, and when the session of 1689 came to an end on the 2nd of August the question was still unsettled.

Abolition of the Committee.

In the next session, when Lord Melville had succeeded as Royal Commissioner on the death of the Duke of Hamilton, the most important question was whether the estates were to manage their business as an open legislative assembly, or to work through permanent committees. It was the question that had aroused so much contention in the short session of 1689. The estates showed no disposition to recede from the position of the previous session, and finally the King virtually yielded everything. It was determined that there were to be no permanent committees like the Lords of Articles, but that the estates were to appoint their committees from time to time to digest measures submitted to their consideration; and the only difference between the Act of 1690 as it received the royal assent, and that which Hamilton had refused in the previous session, was that the officers of State might attend committees with the privilege of moving and debating, but not of voting[1].

Letters from William III.

The Duke of Hamilton, who had been anxious to resign his commission even while the contest with Parliament was proceeding[2], died between the end of the session of 1689 and the session which opened on the 15th of April, 1690; so that when he was succeeded by Melville a second letter of instruction had to be transmitted by the King. Two letters were sent. One was a formal letter which found its way on to the Parliamentary records. The second was to be regarded by Melville as private. The formal letter dealt with the question of county representation in much the same terms as the letter to Hamilton. The private letter is of more interest to students of the history of the Scotch representative system, as it shows that the methods of managing Scotch members of Parliament so generally used after the Union were in existence as soon after the Revolution as 1690. It shows also that King William, although a foreigner, had soon become acquainted with the mode of managing Parliaments, and further that he commanded the use of corrupt methods in Scotland about

[1] Burton, VII. 353.

[2] Cf. *Hist. MSS. Comm. 11th Rep.*, App., pt. VI. 178.

the same time that he began in England to buy votes in the House of Commons.

His Efforts to influence Parliament.

However much the King may have disliked these methods[1] he was using them in both England and Scotland in 1690; and in Scotland with as much skill as an old practitioner. He wrote to Melville, on the eve of the session of the Scotch Parliament of 1690, "You are allowed to deal with the leading men in the Parliament, that they may concur for redressing the grievances; without reflecting upon some votes in Parliament much insisted on last session, which upon weighty considerations we thought not fit to pass into laws; and what employment or other gratifications you think fit to promise them in our name we shall fulfil the same[2]." Dundas was surely never given a freer hand in the reign of George III than was thus given to Melville by King William. Nor were Melville's efforts as a Parliamentary manager to be confined to members already of the Scotch Parliament. "You are," continued the King, in his secret letter to the Royal Commissioner, "to deal with all other persons as you shall have occasion, whom you judge most capable to be serviceable to us, that they may be employed as instruments in taking off these leading men, or for getting intelligence, or for influencing shires or royal burghs, that they may instruct their commissioners cordially to comply with our instructions for redressing the grievances, and what money or other gratifications you shall promise them shall be made good[3]."

Redistribution Act of 1690.

The Redistribution Act for the counties was passed without any of the contention which in the previous session had marked the efforts of the Parliament to secure the abolition of the Committee on the Articles. "Our Sovereign Lord and Lady, the King and Queen's Majesties," reads the enacting clause of the measure of 1690, "considering the largeness, extent, and value of the lands holden by the barons and the freeholders within the shires after mentioned, to the effect that they may have a more equal representation in Parliament with the barons and freeholders of the other shires of the Kingdom, therefore their Majesties, with the advice and consent of the Estates of Parliament, statute and ordain that in all Parliaments, Meetings and Conventions of Estates, to be holden henceforth and hereafter, the barons and the freeholders of the shires after mentioned shall add to their former representation the number of commissioners after expressed: Edinburgh 2;

[1] Cf. Burnet, *Hist. of His Own Time*, II. 53, 54.

[2] *Melville Papers*, 417.

[3] *Melville Papers*, 417.

Haddington 2; Berwick 2; Roxburgh 2; Lanark 2; Dumfries 2; the Stewartry of Kirkcudbright 1; Ayr 2; Stirling 1; Perth 2; Aberdeen 2; Argyll 1; Fife 2; Forfar 2; and Renfrew 1[1]." It was further declared that "the Act shall take effect at the next session of Parliament."

The Act in Operation.

The session in which the Act was passed ended on the 22nd of July, 1690. The next session began on the 3rd of September, and lasted until the 10th of the same month. To this session eight counties sent additional commissioners. But the others were tardy in complying with the Act of 1690; and the twenty-six new commissioners were not all in attendance until 1693, and then only after the passage of a second Act compelling the shires to elect the additional commissioners, and also compelling the freeholders in counties whose representation had not been enlarged, but which until 1693 were unrepresented in the first Parliament after the Revolution, to elect their commissioners[2].

Importance of the Act.

The Act of 1690 is a landmark in the representative history of Great Britain. It put the representation of counties in Scotland on the basis on which it stood until the Union. It is also remarkable as the only measure for an equalisation of electoral power passed before the Reform Act of 1832 by either the Parliament of Scotland or the Parliament at Westminster. Some measure of Parliamentary reform was expected for England at the Revolution. But the English advocates of a redistribution of electoral power had not the same opportunities of pledging William III to Parliamentary reform for England as had the advocates of reform who were of the Scotch Convention which drew up the Articles of Grievances.

King William's Influence on the Scotch System.

As King William's letter to Melville clearly shows, the King sought to interfere both with the votes of members of the Scotch Parliament and with elections to Parliament. The kind of interference in elections which Melville was directed to engage in, when the King undertook to make good his promises of money and other gratifications, could not have been general before the Revolution. Had it been so, commissions to Parliament from counties and burghs would have been in much greater demand than they were up to the end of the Stuart dynasty. If money and other gratifications had been easily obtainable by commissioners to Parliament, Cromarty, Kilrenny, and Anstruther Wester would

[1] *Acts of the Scotch Parliaments*, ix. 152.

[2] *Acts of the Scotch Parliaments*, ix. 250.

not have fallen out of the list of royal burghs as they did in 1672. No English boroughs, however small, however poor, and however imperfect their municipal administration, were permitted to allow their representation to lapse after seats in the House of Commons were once in demand. From the beginning of the sixteenth century there was usually some local landowner, or some officer connected with the court, ready to nominate members from such boroughs to the House of Commons. Such outsiders must have been lacking in connection with burgh representation in Scotland, or the three burghs which, on their own petition, were disfranchised on account of their poverty in 1672, would have had patrons at hand to take the burden of their Parliamentary representation. Each of these three burghs came back into the Parliamentary representative system; and it is significant that their return into the list of royal burghs occurred only a few years after the letter of King William to Melville instructing him, as Royal Commissioner, freely to use money and other gratifications in the election of commissioners for shires and burghs. There is good reason for believing that, while the Parliament of Scotland obtained from King William the abolition of the Committee of Articles; the burghs the elimination of honorary burgesses; and the shires a more equal representation, it was to King William that Scotland owed the introduction of the system of largess to both elected and electors which was the basis of the management of its representation from the Union until 1832.

# CHAPTER XXXVI.

## THE NON-ELECTED MEMBERS OF THE SCOTCH PARLIAMENT.

Three Non-elected Groups.

It is no part of my plan to treat of members of Parliament not elected by constituencies. I have no concern with the House of Lords except as it has affected the system of Parliamentary representation. But to make complete the history of the representative system in Scotland before the Union, and to bring out the environment of the commissioners from burghs and counties in Parliament—for all three estates sat in the same chamber—a brief sketch must be given of the three other groups which were of the Scotch Parliament.

Bishops.

These groups were the Nobility, the Bishops and Prelates, and the Officers of State. Only two of these groups, the nobility and the officers of State, were of the Parliament at the Union. The bishops attended the Convention Parliament; but in this assembly they had been deprived of their votes as a separate ecclesiastical order, and as a temporary arrangement they were permitted to attend as items in the order of temporal lords. The movement which led to the deprivation of their votes as an ecclesiastical order grew as the session of the Convention proceeded, and in the Declaration of Right it was asserted that the existence of the order of bishops was a grievance[1]. The outcome of this movement was that when the Act turning the Convention into a Parliament was passed, it was enacted, in accordance with the letter of instruction from King William to the Duke of Hamilton, that the Parliament should consist of noblemen, barons, and burgesses; and among the Acts passed in the short session of 1689 was one which abolished prelacy and all superiority of office in the Church[2].

[1] Cf. Burton, VII. 421.

[2] Cf. Burton, VII. 425.

Nobles.

In the early as in the closing years of the Scotch Parliament the three estates consisted of the nobility, the barons, and the burgesses. The obligation on the nobility to give attendance when summoned by the King was continued to the Union, and the only enactments of moment affecting the position of the nobility in Parliament were those of 1587 and 1640. Of these the Act of 1587 was the more important, for the usage which grew up in connection with it continued after the Union, and until 1832 served to exclude the eldest sons of Scotch peers from representing either Scotch burghs or counties at Westminster. It was passed in consequence of "the decay of the form, honour, and majesty of Parliament"; and was intended to restore Parliament to "its ancient order, dignity, and integrity." This enactment must have helped to keep the nobility a class apart in Parliament; for it prevented peers' sons from gaining admission either as commissioners from shires or from burghs. The Act of 1640 was important by reason of the landed qualification which it established for a peer of Parliament. It enacted that "all noblemen, viz., dukes, marquises, earls, viscounts, and lords, shall give their personal presence in all Parliaments, and that no person shall hereafter have any place or voice in Parliament, but such nobleman before specified . . . as has entry either by birth, blood, or by inheritance, within this kingdom, and ten thousand merks a year of land rents[1]."

Number of the First Estate.

At the Union the first estate numbered one hundred and sixty[2], but the records of Parliament in the seventeenth century do not show an attendance of the nobility at all commensurate with the number of peers in 1707; and although the estates seldom met away from Edinburgh after the Convention at Perth in 1601, attendance on Parliament never seems to have led the peers to establish themselves in Edinburgh, never made it necessary that the town-house of a Scotch lord should be in the capital. "In Perth, St Andrews, Aberdeen, Elgin, and other towns," writes Burton, in describing the social life of the Scotch nobility during the period which followed the union of the crowns of England and Scotland, "stood the winter town-houses of many of the neighbouring land-owners, and the small town of Maybole in Ayrshire still contains, as the capital of Carrick, the seemly hotel of the Kennedies, who were

[1] *Acts of the Scotch Parliaments*, v. 304.

[2] Protestation of the Duke of Atholl, *Acts of the Scotch Parliaments*, IX. 386.

supreme in that old province[1]." The frequency with which Conventions of the Estates were called in the sixteenth century and in the early decades of the seventeenth, and the shortness of their sessions, would tell against a full attendance of the nobility. The English representative system could never have become as inclusive and as general as it was by the fifteenth century had Parliaments been called several times a year to despatch work which occupied only two or three days. The attendance of the Scotch nobility increased during the second half of the seventeenth century; but in the Parliament which passed the Act of Union only seventy-two peers are recorded as in attendance at the opening of the session in 1706. Of these, three were dukes; three, marquises; forty-one, earls; four, viscounts; and twenty-one, lords; while the shires in this session, the last of the Scotch Parliament, were represented by eighty, and the burghs by sixty-seven commissioners[2].

Bishops disappear at the Reformation.

Cosmo Innes cites a statute passed in 1230 as proof that the bishops and abbots were at that period exercising legislative functions; and he states that the "clergy, as one of the estates, may be said to have disappeared with the Reformation[3]." As of the estates, by virtue of their holding of lands, the abbots and prelates disappeared after the Reformation; and the bishops, who were of the Parliament between the Reformation and the Revolution, owed their presence there to statutory enactment, and not as the nobility, who held their seats by tenure. One of the earliest references to the disappearance of the pre-Reformation abbots and prelates to be found in the Parliamentary records is in the Act of 1587. In the preamble of this Act it is stated that one of the reasons for passing it, and bringing the shires into the representative system, was the great decay of the Ecclesiastical Estate[4].

Acts for their Restoration.

Ten years later came the first of the Acts by virtue of which the clergy were again of the estates. It was passed as "an evidence of the great zeal and singular affection" which James VI always had "to the advancement of the true religion presently professed in this realm." It directed that "such pastors and ministers within the same as at any time his Majesty shall please to provide to the office, place, title, or dignity of bishop, abbot, or

[1] Burton, v. 396.

[2] Cf. *Acts of the Scotch Parliaments*, xi. 302.

[3] *Acts of the Scotch Parliaments*, i. vii., xi.

[4] *Acts of the Scotch Parliaments*, viii. 509.

other prelate, shall in all time hereafter have voice in Parliament as freely as any other ecclesiastical prelates had at any time by-gone[1]." This Act was passed in 1597, and in 1598 three bishops and five abbots were of the Parliament[2]. In 1606 there was an Act for the restoration of the order of bishops "to their ancient and accustomed honours, dignities, prerogatives, livings, and lands." This Act did not recover for the Church the vast lands of the Church of the pre-Reformation period; for in the years which had intervened between the Act of annexation of 1587, by which all estates then in the hands of ecclesiastics were vested in the Crown, and this Act of 1606, these dominions had been "subject to the risks to which such property is proverbially liable[3]." "Wherever," writes Burton, "there is property held for the benefit of the public at large, there a ceaseless suction is at work like a dynamic power in nature, drawing it into private hands. Statesmen with all modern appliances against dishonesty and official neglect know how difficult it is to keep the domain of the Crown from 'waste.' In that day it was guarded by careless officers, ever ready to serve a friend, especially for a consideration in return; these friends were a needy, rapacious, and powerful body of men, ever hovering around the treasure so imperfectly guarded[4]."

The Decay of the Bishops.

The lands of the Church of the pre-Reformation period had disappeared; but the Act of 1606 confirmed the bishops of the episcopacy which James VI had established in the place in Parliament first made for them by the Act of 1597: and in the Parliament of 1617 twelve bishops and one abbot were in attendance[5]. Until 1633[6] the bishops continued of Parliament by virtue of the Acts of 1597 and 1606, and during this period they formed a separate estate, and like the nobility, the barons, and the burgesses, they chose their own delegations to the Lords of Articles[7]. In 1638 and 1639 the General Assembly of the Presbyterian Church waged its war for the abolition of episcopacy; and before the Parliament of 1639–41 met the bishops had been deposed[8].

[1] *Acts of the Scotch Parliaments*, IV. 130; cf. Tytler, *Hist. of Scotland*, IV. 240.

[2] Cf. Rait, "The Scottish Parliament before the Union of the Crowns," *Eng. Hist. Rev.*, April, 1900, 218.

[3] Burton, V. 441.

[4] Burton, V. 444, 445.

[5] *Acts of the Scotch Parliaments*, IV. 524.

[6] *Acts of the Scotch Parliaments*, V. 67.

[7] Maitland, *Miscellany*, III. pt. I. 114.

[8] Cf. *Acts of the Scotch Parliaments*, V. 251.

"The bishops," wrote James Howell, who was in Edinburgh on the eve of the Parliament of 1640, "are all gone to rack, and they have had but a sorry funeral. The very name is grown so contemptible that a black dog, if he hath any white marks about him, is called bishop[1]."

Their Exclusion in 1640.

There were no bishops in the Parliament which assembled on the 2nd of June, 1640; and moreover there was awaiting action by Parliament a resolution of the General Assembly "condemning the office of bishops, archbishops, and other prelates, and the civil power and places of kirkmen, as their voicing and riding in Parliament," and craving the repeal of the Acts of 1597 and 1606, which granted "to the kirk and kirkmen a vote in Parliament," as prejudicial to the liberties of the Church and incompatible with her nature[2]. Already Scotland was on the eve of the conflict with Charles I. Parliament in 1640 was acting in defiance of the King, for the King had sent instructions from London to adjourn or prorogue the session[3]. "But the official persons whose signatures and sealings authenticated and recorded such writs either would not or dared not act. The members of Parliament knew, as people know the news of the day, that the King had issued such an instruction; but it was not formally and officially before them, and it did not enter on their records[4]."

Parliament and the Appeal of the General Assembly.

The King had intimated to Parliament that procedure without the bishops would be irregular; but Parliament surmounted this difficulty, and responded to the appeal of the General Assembly for the abrogation of the laws of 1597 and 1606 by a single enactment. The Act declared that "this present Parliament of the nobility, barons, and burgesses and their commissioners, the true estates of this kingdom" was a complete and perfect Parliament, and "had the same power, authority, and jurisdiction as absolutely and fully as any former Parliament hath had within this kingdom in time gone by." Next came the clause in the enactment embodying the response to the appeal from the General Assembly. It ordained that all Parliaments thereafter to be constituted should consist only of the noblemen, barons, and burgesses; and it rescinded and annulled all former laws "made in favour of whatever bishops, archbishops, abbots, priors, or prelates, or churchmen whatsoever, for their riding, sitting, or

[1] James Howell, *Familiar Letters*, 276.

[2] *Acts of the Scotch Parliaments*, v. 260.

[3] Cf. Burton, vi. 282.

[4] Burton, vi. 282.

voting in Parliament, either as churchmen or as the clergy, or in the name of the Church, or as representing the Church as one state or member of Parliament." To quote further from this Act of 1640, representation of the Church in Parliament was abolished, "as being found and declared prejudicial to the liberty of the kirk and kingdom, and to the purity of the true reformed religion therein established." Finally there is a clause which threatened with the pain of treason any who should "call in question the authority of this Parliament upon whatsoever pretext[1]."

Final Exclusion of the Bishops.

The Parliament which passed this Act was dissolved in November, 1641. There were three Conventions or Parliaments between 1641 and the assembling of the Commonwealth Parliament of which the Scotch were members. But the clergy were not again of the Parliament until the Restoration. Then in 1662 an Act was passed restoring "the state of the bishops to their ancient and undoubted privileges in Parliament, and to all their other accustomed dignities, privileges, and jurisdictions[2]"; and on the 8th of May, 1662, at the opening of the second session of the Parliament of 1661–63, two archbishops and twelve bishops again took their places in the House[3]. "This day," chronicles John Lamont in his diary, "the Earls of Kellie and Wemyss were sent out of the House to bring in the said bishops, to be members of this Parliament (remember that this is the first Parliament that bishops did sit in here in Scotland since the late troubles which began in 1638), and when they were come in, His Majesty's Commissioner had a speech to them congratulating their return to the said judicatory, and showing lameness of that meeting all that time since they were debarred[4]." The bishops continued of the Parliament until they were finally excluded by the measure of 1689. On the eve of the Revolution there were two archbishops and nine bishops of the Parliament[5]. At this time, and in fact from their return after the Act of 1662 until their exclusion at the Revolution, the bishops elected their own delegation to the Committee on the Articles[6].

Officers of State.

Neither in the English House of Commons, nor in the House of

[1] *Acts of the Scotch Parliaments*, v. 260.
[2] *Acts of the Scotch Parliaments*, vii. 372.
[3] *Acts of the Scotch Parliaments*, vii. 368.
[4] *Diary of Mr John Lamont of Newton*, 1649–71, 148.
[5] Cf. *Acts of the Scotch Parliaments*, viii. 576.
[6] Cf. *Acts of the Scotch Parliaments*, viii. 457.

Commons of the Parliament of Ireland, was there ever a non-elected element corresponding to that which formed the fifth group in the Scotch Parliament during the seventeenth century, when the groups were the Ecclesiastical Estate, the Nobility, the Barons, the Burgesses, and the Officers of State. In the House of Commons at Westminster before 1832 there were, as now, officers appointed by the Crown. But unlike the officers of state in the Scotch Parliament, these officers at Westminster were all of the House by election. The officers of state in the Scotch Parliament were appointed by the Crown, and had their place in Parliament by virtue of their office. How and when the officers of state began to exercise all the rights and privileges of members of Parliament it is difficult to determine. There is good reason for believing that until 1617 the officers of state enjoyed by usage, and not by enactment, the rights of commissioners within the Chamber. From 1617 until 1641, however, the officers of state enjoyed their privileges by statute; for in 1617 an Act was passed fixing the number of officers who were to have voice and vote at eight[1]. Hitherto there had been no restriction on the number, for it is stated in the preamble to this Act of James VI that "in the past there had been sometimes more and sometimes fewer than eight." The uncertainty had apparently led to some contention; for it was to make the number certain that the Act was passed. By this measure of 1617 James VI "was graciously pleased to declare that in this Parliament and all Parliaments hereafter" only eight officers of state "should sit and have place and vote in Parliament and Articles." At this time the officers of state were High Treasurer, Secretary, Privy Seal, Clerk of Register, Master of Requests, Justice Clerk, Advocate, and Deputy Advocate; and the Act provided that only these officers should hereafter be of the Parliament.

Their Vicissitudes from 1641 to 1707.

In 1641, in the Parliament that had excluded the bishops, the officers of state were deprived of the rights which they had enjoyed by statute since 1617. They were excluded by an Act which declared that none of the officers of state were to "have a voice or presence in Parliament hereafter," and which repealed "all Acts formerly made whereby they or any of them may pretend ground or liberty to sit and voice in Parliament[2]." Like the bishops, the officers of state

[1] *Acts of the Scotch Parliaments*, IV. 526, 527.

[2] *Acts of the Scotch Parliaments*, V. 329.

came back into their old place in Parliament after the Restoration; for the Parliament of 1661 not only restored the hierarchy and burned the Covenant, but it rescinded all the statutes passed since 1633. The officers of state came back at the Restoration in the numbers fixed by the Act of 1617; and unlike the bishops they survived the Revolution, and formed the only group in the Scotch Parliament which lost all its Parliamentary privileges at the Union. The Lord Advocate reappeared in the Parliament at Westminster; but after the Union as a representative of a constituency, and not, as in the Scotch Parliament, by virtue of the office he held under the Crown. The Lord Register, the Lord Advocate, and the Lord Justice Clerk voted in the divisions on the Act of Union; and in the closing days of the Scotch Parliament they are described in the records as the lesser officers of state, to distinguish them from the Lord High Treasurer and the Lord Privy Seal, who then had seats in Parliament with the nobility[1]. In the minuting and in the divisions the lesser officers of state were called after the lords and before the commissioners from the shires, and their appointed seats in the Chamber were upon the steps of the Throne.

[1] *Acts of the Scotch Parliaments*, xi. 301.

# CHAPTER XXXVII.

## USAGES AND PROCEDURE.

The Place of Meeting.

THE Scotch Parliament, from the time when the elected element was numerically predominant, never met for a full century in the same building. Before the beginning of the seventeenth century the Estates convened most frequently at Edinburgh; but occasionally they met at Perth, Stirling, Linlithgow, Haddington, St Andrew's, Dunfermline, Dundee, and Falkland. During this time, when the estates were convened at Edinburgh they met in Holyrood House; and there were conventions of estates there as late as 1602[1]. From 1604 until the Parliament of 1639–41, which was in conflict with Charles I, the meetings were in the Tolbooth of Edinburgh, a building then standing on the site of the existing Parliament House, and dating from the middle of the sixteenth century. The new Parliament House was built at the cost of the citizens of Edinburgh, who were compelled to build it by a threat that if better accommodation than the dingy recesses of the Tolbooth were not provided, the Parliament would meet elsewhere than in Edinburgh. The new Parliament House was begun in 1632. It was ready for the estates at the opening of the short and disputatious session of 1639, when for the first time they occupied the Great Hall with its fine roof-work of oaken beams, "the fair Parliament House" of Howell's *Familiar Letters*, which has ever since been one of the glories of Edinburgh[2].

Character of Parliament.

Except for the few years between the Revolution and the Union the Parliament of Scotland was not a deliberative assembly like the House of Commons at Westminster. It could not be a deliberative assembly so long as the Committee on the Articles

[1] *Official List*, pt. II. 546, 547.

[2] Cf. *American Architect and Building News*, XXIX. 765.

existed, and when all that Parliament had to do was to accept or reject the measures of the Committee. "During all these centuries," writes Innes, in describing the Scotch Parliament from the fourteenth century to the seventeenth, "I am not aware that an article, as we should say now a bill, was brought in and discussed, opposed, supported, and voted upon in Parliament, I mean in open and plain Parliament[1]."

Contrast with House of Commons.

Nor was the Parliament of Scotland always a representative or elective assembly in the sense that the House of Commons is and always has been. The Scotch Parliament was approximately a representative assembly only for the single century which preceded the Union. It came nearest in character to the House of Commons from the time when the commissioners from the shires generally began to be elected. But even during the seventeenth century all the estates met in one chamber, and the elected representatives from the burghs and shires sat with three groups in Parliament, the Ecclesiastical Estate, the Nobility, and the Officers of State, not one of which was of the Parliament by election. In the reign of Edward VI, when the printed Journals of the House of Commons begin, it is possible to discover the existence of many usages and customs which are observed in the House of Commons of to-day. For many such usages the Parliament of Scotland could have no occasion until both the burghs and the shires were generally represented, and until Parliament was regularly attended by a larger number of members than were ever in attendance at the short and frequent conventions which marked the Parliamentary history of Scotland until the end of the sixteenth century.

In Usages and Procedure.

Enactments as to the order of the picturesque ceremony known as the riding of Parliament there were as early as 1465; but not until Parliament was holding its sessions in the new Parliament House, have I been able to trace in the records any orders governing the seating of the estates and the mode of conducting business. The fact that Parliament was now meeting in its new chamber doubtless accounts for the fulness of the orders as to procedure which were adopted in 1641[2]. In the Journals of the Irish House of Commons it is possible to watch the House patterning its rules after those of the House of Commons at Westminster, and to discern the establishment of customs there which were customs in

[1] Innes, *Lectures on Scotch Legal Antiquities*, 145.

[2] Cf. *Acts of the Scotch Parliaments*, v. 338, 339.

the English House. The Irish House of Commons went so far in copying the usages and customs of Westminster as to adopt the ceremonies which attended the election of Speaker, even to the self-deprecating speeches which were made on the steps of the Chair. In the Scotch Parliament there was no such close following of the orders and usages of Westminster as there was in Dublin; and the rules of the Scotch Parliament during the last seventy years of its existence emphasise the difference between it and the Houses of Commons at Dublin and at Westminster[1].

Seating of Parliament.

The difference between the Scotch Parliament and the Commons at Westminster—due to the fact that all three estates sat in the same chamber—is brought out in the rules of 1641 for the seating of members. At this time neither the bishops nor the officers of state were of the Parliament, so that the House had to settle only the seating of the nobility, the barons, and the burgesses. The Throne in the Scotch Parliament House was at the south end of the Chamber. The nobility sat on the benches along the eastern and western walls; and by the orders of 1641 the commissioners for shires were directed to sit beneath the earls on the east side of the Throne, while the commissioners for burghs were directed to sit on the west side beneath the lords. After the Revolution, in 1693, when all the sixty-six royal burghs in existence at the Union save Campbelltown, and all the thirty-three counties, were electing their full quota of commissioners, the order of seating was remodelled. It was then enacted "that none presume to sit upon the benches save the nobility; that the officers of state sit upon the steps of the Throne; and that the commissioners for shires and burghs sit on forms appointed for them[1]." In the English House of Commons at this time, and indeed until the middle years of the eighteenth century, the opposition did not sit apart from the supporters of the Government. In the Scotch Parliament only spasmodically, as for instance in 1689 in the contest with King William for the abolition of the Committee of Articles, was there any organised opposition; and had such an opposition existed in the seventeenth century it would not have been practicable, under the rules of 1641 and 1693, for it to have sat apart within the Chamber. The opposition of the short tempestuous session of 1689 does not seem to have sat together in the House. Its existence was chiefly marked by its meeting out-of-doors at

[1] *Acts of the Scotch Parliaments*, IX. 247.

Penston's Tavern, where, forming then the majority in Parliament, and apparently drawn from all three estates, it settled its plans of consolidated action by discussion and vote, appointing a clerk, and otherwise systematically conducting its proceedings[1].

Sittings of the House.

In the mode of conducting its sittings the Scotch Parliament had rules which had no counterpart in the House of Commons. Under the regulations of 1641 the House met at nine in the morning and sat until twelve, and met again in the afternoon, when the dyet was from three until six. Members were called together by a bell; and by a bell they were notified when the hour had arrived for the noon recess, and when the dyet was at an end in the evening[2]. At the beginning of each sitting the roll was called, and members who did not respond were liable to a fine. In the scale of these fines there is traceable a distinction, like that which was made in the House of Commons at Westminster between knights of the shire and members from the boroughs. Knights of the shire at Westminster were liable for larger fines for non-attendance than borough members; and in the Parliament at Edinburgh there was a similar differentiation. Under the orders of 1641 noblemen who were not present at roll-call were liable to a fine of eighteen shillings; barons or commissioners of the shire to a fine of twelve shillings; while the fine imposed on commissioners from the burghs was six shillings[3].

Wearing of Swords.

At Westminster only knights of the shire had the privilege of wearing swords. In this matter the orders of the Scotch Parliament were not so exclusive. In the seventeenth century, in the House of Commons, strangers had no formally recognized place. In the Scotch Parliament strangers were admitted when the House thought expedient; and one of the orders of 1641 directed that "all those who are permitted to remain in the Parliament House, and are not members of Parliament, shall keep their places appointed and uncovered and silent, unless they be desired to speak." In this order regulating the presence and behaviour of strangers, members of the House were allowed to appear with swords. "None who are admitted to remain within the House of Parliament," it reads, "shall have any weapons, except the members of Parliament, and these only to have their swords if they please[4]." When the knights

[1] Cf. Burton, VII. 334.

[2] *Acts of the Scotch Parliaments*, v. 339.

[3] Cf. *Acts of the Scotch Parliaments*, v. 361.

[4] *Acts of the Scotch Parliaments*, v. 338, 339.

of the shire in England received their writs of election they were, in accordance with the words of the writ, in county court publicly "girt with sword." There is no mention of the conferring of any such badge of office upon commissioners for the shires in Scotland in any of the sixteenth or seventeenth century Acts of Parliament on which the county electoral system was based. After the Union, however, the writs for elections in Scotland were patterned after the writs so long in use in England. The freeholders were convened "for the election of a knight, girt with sword, perfect, and discreet"; and, as was so long the custom in English county elections, the freeholders, or a number of them, subscribed their names to the writ[1]. The old English custom survived in Scotland the Reform Act of 1832. It was in vogue in Sutherlandshire as late as 1867[2]; and did not disappear until after the Reform and Redistribution Acts of 1884 and 1885.

President of Parliament.

In the first century of the Scotch Parliament there is mention of an officer known as the Speaker. In 1427 the commissioners from the burghs were directed to choose "a wise and expert man" to be called the Common Speaker of the Parliament, "who shall propose matters pertaining to the Commons in Parliament." Whether the officer so chosen was a Speaker in the sense of the Speaker at Westminster, or whether he was only the spokesman of the commissioners from the burghs, is a question which cannot be determined. The directions to choose "a wise and expert man"; the reference to him as the Common Speaker of the Parliament; and the fact that in this Parliament of 1427, James I of Scotland, who had been in England, was attempting to set up a representative system in the Scotch counties on the English model, might support the inference that the officer he directed to be chosen was to hold a position similar to that of Speaker at Westminster. However that may be, the term Speaker did not long survive. It is even doubtful whether the direction was ever carried out[3]; and the official discharging the office of Speaker soon came to be described in the records as the President of the Parliament. As time went on, it would appear that he was not chosen for each Parliament as was the rule at Westminster nor

[1] Cf. *The Family of Rose of Kilravock*, 395.

[2] Cf. Lord Ronald Gower, *My Reminiscences*, 173.

[3] Cf. Rait, "Scottish Parliament before the Union of the Crowns," *Eng. Hist. Rev.*, April, 1900, 227.

was he elected by Parliament. "The President was in general the Lord Chancellor. He was at first nominated by the King for the purpose; but he gradually came to hold the position *ex officio*[1]."

Electing the President.

In 1641, when the Parliament, then free from the control of the Crown, was excluding the bishops and officers of state, reforming the Committee of the Articles, and establishing triennial Parliaments, a new rule was made governing the election of the President. At Westminster the term of the Speaker ends with the dissolution of the Parliament, and in the brief proceedings necessary to the choice of a Speaker in a newly elected House of Commons the clerk at the table acts as moderator. This was not the mode of procedure adopted by the Scotch Parliament of 1639–41. "In all ensuing Parliaments," reads the Act of 1641, "the President of the Parliament preceding shall preside until the House be ordered and the oaths taken by all members of Parliament," and then the House "shall proceed to the finding of a new President[2]." Election of Speaker by the estates did not however survive the Covenant Parliament, and after the Restoration the office reverted to the Chancellor.

Rules of Debate.

Among the new rules governing the order of Parliament and the manner of conducting business adopted in 1641, was one that a member addressing the House should direct his speech to the President, and not to the previous speaker. This rule was adopted "so as to avoid contest and heat[3]." Another rule directed that none should interrupt the "time of voicing." At the Restoration all the Acts passed by Parliament since 1633 were repealed; but the rules as to seating and the order of business made in 1641 were evidently continued; for in 1693 the rule of 1641 governing the order of debate was reaffirmed and amplified; and there came into use a new rule, somewhat similar to that of the House of Commons, regulating the frequency with which a member could address the House. "That in all debates of the House," reads the rule of 1693, "no person offer to interrupt another, nor to direct his discourse to any one but my Lord Chancellor or President; That all reflection be forborne; and That no man offer at one dyet and in one business to speak oftener than twice at most, except in

[1] Cf. Rait, "Scottish Parliament before the Union of the Crowns," *Eng. Hist. Rev.*, April, 1900, 226; cf. *Acts of the Scotch Parliaments*, v. 368.

[2] *Acts of the Scotch Parliaments*, v. 328.

[3] *Acts of the Scotch Parliaments*, v. 328.

such cases where leave shall be first asked and given by His Majesty's Commissioner[1]."

Restrictions on the Speech of Members.

Outwardly the Scotch Parliament at this period was freer from Crown control than at any previous time in the seventeenth century, excepting the few years of 1639 onward when it was in conflict with Charles I. But the rule of 1693, making the frequency with which a member could address the House dependent on the consent of the Royal Commissioner, makes it obvious that the President of the Scotch Parliament had not the complete control over the order of the House that, from the earliest time, was in the hands of the Speaker at Westminster. Nor can it be assumed that the rule of 1693 as concerns frequency of speaking was entirely new. Royal Commissioners had represented the Crown in the Scotch Parliament since the Union of the Crowns of England and Scotland in 1603, and some such rule must have existed from the early years of the seventeenth century. Proof of the existence of such a restriction of debate, of even a more rigid and arbitrary usage, is forthcoming in the memorable speech of James VI at Whitehall in 1607, in which the first of the Stuarts to rule in England declared that he sat in London and governed Scotland with his pen; that he wrote, and it was done; "and by a clerk of the Council I govern Scotland now, which others could not do by the sword." "For here I must note unto you," continued James VI, in contrasting the Parliament at Westminster with the subservient Parliament at Edinburgh, "the difference of the two Parliaments in these two kingdoms. For there they must not speak without the Chancellor's leave; and if any man do propound or utter any seditious or uncomely speech, he is straight interrupted and silenced by the Chancellor's authority[2]."

A Hard Task for the President.

After the Revolution, when the Crown was no longer as dominant in Parliament as it had been at the time of James VI's Whitehall address, the Chancellor had not an easy position. It was not then a simple matter for him to act as James VI had described. The Earl of Marchmont was Chancellor in 1701, and in a letter of January 9th he described the sederunt of January 7th, over which he had presided, as the hottest, most contentious, and most disorderly that he ever saw. "I wish and hope," Marchmont wrote, "never to see the like. Sometimes most part of the members were upon their feet and speaking together; and it was hardly

[1] *Acts of the Scotch Parliaments*, IX. 247.

[2] *Acts of the Scotch Parliaments*, I. xii., xiii.

possible for me to get them composed, though the Commissioner did interpose[1]." A month later Marchmont wrote, "I am sure I have had a more difficult and burdensome post than anyone who has been in my station in the last century[2]."

Stages of a Bill.

There were no rules in the Scotch Parliament corresponding to those in the House of Commons regulating the various stages of a bill. Before the Revolution there could have been nothing corresponding to the discussion of the principle and scope of a bill which takes place in the House of Commons at second reading, nor to the full and free discussion at committee stage. There could be neither of these stages so long as the real work of the Scotch Parliament was in the hands of the Committee of the Articles[3]. The details of all general legislative measures were adjusted by the Committee. "When they had finished their work," writes Burton, in describing the procedure of the Parliament in 1633 when for the first time there was a distinct appearance of a constitutional Parliamentary opposition, "they sent up the several measures to the whole House for a vote of adoption or rejection. It is visible at once that such an arrangement might be so worked as to despoil a majority of a great part of its power. There was no opportunity for that useful apparatus of Parliamentary tactic 'the amendment.' A member of the estates was perhaps prepared to vote against certain clauses of a measure had they been separately put to the vote; but he was not prepared to vote against a whole measure because of his opposition to these clauses. Of course, this gave opportunity to dexterous politicians so to adjust the measures that they should carry through as much unpopular matter as they could be safely laden with. Hence the English Commons wisely adjusted their practice of transacting in committee of the whole House the kind of business that in Scotland fell into the hands of a select committee[4]."

Royal Assent.

The final stage of a bill, that at which it received the Royal Assent, is described by the Earl of Marchmont, who was Chancellor for several years after the Revolution. "When any law is voted and engrossed," he wrote, "when the Commissioner calls for it, the Chancellor subscribes upon the Act his name, adding 'Cancellar,'

[1] *Marchmont Papers*, III. 217.
[2] *Marchmont Papers*, III. 218.
[3] Cf. Innes, *Lectures on Scotch Legal Antiquities*, 145.
[4] Burton, VI. 86, 87.

and the initial letters of the words *In Praesentia Dominorum Parlementi.* Then it is carried to the Throne, and the Commissioner, the title being read to him by the Lord Register, touches it with the royal sceptre, which is the symbol of the Royal Assent[1]."

The Session of 1612.

In the *Maitland Club Miscellany* there is an excellent contemporary description of a complete session of the Scotch Parliament in 1612. This was the Parliament in which, in the official lists, 'the commissioners for the barons are first distinguished by the counties from which they were returned; and moreover, as James VI in his speech at Whitehall declared, it had "little popularite about it"; for in this Parliament of 1612, still meeting in the old Tolbooth of Edinburgh, the Committee of Articles was as dominant as ever. Further the newly restored bishops were in attendance, and the officers of state, still unregulated in number by statute, were in full force.

Opening Ceremonies.

"Entering the Tolbooth with the heralds and trumpeters," writes the historian of the Parliament of 1612, taking up the story after the estates had arrived in ceremonial order from Holyrood House, "they retired to the Inner House, and after some short rest they came and took their places, the prelates and burghs upon the right hand, and the noblemen and the commissioners for barons upon the Commissioner's left hand. The honours [the Crown, the Sceptre and the Sword, which in the Scotch Parliament seem to have served the same purpose as the mace at Westminster] were laid upon a table set for the purpose; and in all this solemnity the Master of Fenton, being nearest the Commissioner, carried the Commission in a red velvet poke, which was laid upon leach stule, set before the Commissioner's chair in Parliament. The Commissioner and estates being in their places, the Bishop of Glasgow made a sermon. Thereafter the Commission being read, the Commissioner made a harangue, tending to the commendation of the causes of their meeting; His Majesty's due praise; and an exhortation to every one of the estates to do their duties, which being finished, the Commissioner desired the prelates and noblemen to retire them to choose the Lords of Articles. Returning to the Parliament House, and re-entering in their due places, the names of the Lords of Articles were read, and they commanded to convene daily in the Inner Tolbooth at ten and stay till four. The estates rose; trumpets sounded; and all men taking them to their horses, they returned in order to the

[1] *Marchmont Papers*, III. 324.

Abbey, where the Commissioner being conveyed to his chamber, the estates dissolved to their lodgings[1]."

Dissolution.

The proceedings described all took place on the 15th of October. From that date until the 23rd of October there is no record. On the 23rd, the day on which the Parliament was dissolved, the historian again takes up the narrative. "The Commissioner, being at the Abbey," he writes, "the estates went down and conveyed him with solemnity to the Tolbooth." There the Articles were passed in the manner described by Burton, "which all being done," continues the contemporary historian in the *Maitland Club Miscellany*, "the Lion Herald brought the Sceptre to the Commissioner, who therewith ratified all things done in Parliament, and declared the same to be ended, and a short prayer and thanksgiving made by the Bishop of St Andrew's, all men returned to their horses, conveyed the Commissioner to the Abbey, at which time the cannons shot and all dissolved[2]."

Guarding the Parliament House.

The chronicler makes no mention of the search of the Parliament House which took place before the estates assembled. But an earlier historian, whose description of the riding of the Parliament of 1600 has also been preserved by the Maitland Club, records that the Constable of Edinburgh Castle "viewed the rooms under and above the Parliament House"; evidently for the same purpose and in the same way that the Beefeaters from the Tower of London to this day search the basement chambers of the Palace of S. Stephen's immediately before a session of Parliament is begun[3]. The Scotch Parliament, unlike the House of Commons and the House of Lords, had no officer known as the sergeant-at-arms; but it was the usage at Edinburgh that to the Constable of the Castle belonged the custody of the keys of the Parliament House, and the keeping of guard without its gates; while maintaining guard within the walls was the duty of the Marischal. Thus the Marischal kept the peace within and the Constable without the doors; and both had their place in the ceremonies of the riding, opening and closing of the Parliament[4].

Absentee Members.

No references to manucaptors are to be found in the early records of the Scotch Parliament; but by ancient law absentees

[1] *Maitland Club Miscellany*, "Order and Progress of the Parliament of October 1612," III. pt. I. 114.

[2] *Maitland Club Miscellany*, III. pt. I. 114, 118.

[3] *Maitland Club Miscellany*, III. pt. I. 121.

[4] *Spalding Club Miscellany*, II. c.; Nisbet, *Heraldry*, II. pt. IV. 68, 69.

were liable to be unlawed and amerced in fines. After the shires as well as the burghs were generally represented by commissioners, the laws applicable to absentees were remodelled, and penalties were established for failure to attend the House much heavier than those imposed on absentee members of the House at Westminster. In England it was possible to call upon the sheriffs of the county to carry absentee members to Westminster, and later still to send the sergeant-at-arms or his deputy to arrest an absentee when fees to the sergeant were charged to the member who had failed in attendance, and had been brought to the House with a deputy-sergeant as his escort.

Fines.

These fees at Westminster, though sometimes large, were small in comparison with the fines which, under the Act of 1662, might be imposed on Scotch noblemen, barons, or burgesses who had failed to attend. A nobleman was liable to a penalty of twelve hundred pounds scots; a commissioner for a shire, six hundred pounds scots; and a commissioner for a burgh two hundred pounds scots[1]. These fines, moreover, were to be imposed "without prejudice of what further censure Parliament shall think fit to inflict." They were to be imposed on men who failed to attend at all during the session; but the scanty attendance of the nobility from 1662 to the Revolution gives ground for assuming that the fines were not uniformly imposed. For members who had responded to the call for a Parliament, but who were absent without leave from the daily meetings, other fines might be imposed under the Act of 1662. In the case of a nobleman, the fine for absence from a dyet was twelve pounds scots; for a baron, six pounds scots; and for a burgess, three pounds scots. Half these fines might be imposed on members who came into the chamber after the roll-call.

Calling of the Roll.

In the matter of the calling of the roll the Parliament of Scotland differed from the House of Commons. At Westminster there were on special occasions calls of the House, when members were warned to be in their places, and sheriffs were warned by letter from the Speaker to see that the members from their shires were in attendance. But the Journals of the House of Commons do not show that there was at any period a daily roll-call, like that to which there are frequent references in the records of the Scotch Parliament.

[1] *Acts of the Scotch Parliaments*, VII. 371.

Collection of Fines.

After the Revolution, when the Scotch Parliament was adding to the number of county representatives and compelling delinquent counties to elect their representatives, the Act of 1662, imposing penalties on absentees, and on members who were tardy in their attendance on the daily sittings, was "ratified, renewed, confirmed and approved"; and a new Act was passed, authorising the prompt collection of fines. This duty was thrown on the receiver-general of Crown-rents, who was "to collect and uplift the respective penalties of the absents, according to a list to be given and subscribed by the clerks[1]." The clerks were also instructed to make sederunts of each dyet of Parliament, and mark those who were absent; and it was further ordered that the clerks, or any person appointed by them to collect the penalties from absentees from particular dyets, might apply the penalties recovered "to their own use for their pains in making daily sederunts." In order that no member might plead ignorance of this enactment passed to secure full attendance in Parliament, it was directed that the Act should be printed and published at the Market Cross at Edinburgh.

Outdoor Ceremonial.

Out-of-doors in the seventeenth century, much more was seen of the Scotch Parliament than was seen of the House of Commons. In the history of the Parliament at Westminster there was no ceremony which corresponded to the riding of the Scotch Parliament. At Westminster in the days of the Unreformed Parliament, as now, the sovereign might proceed in state to open or prorogue Parliament. Each House, Lords and Commons, had its place in this ceremony; and there was on these occasions a state procession of the Speaker and the Commons to the bar of the House of Lords. But these ceremonies took place within the walls of Parliament, and the people of London and Westminster never had any regularly recurring state pageant in which the Lords and Commons had a part at all corresponding to the riding of the Scotch estates from Parliament Square to Holyrood House during the century in which the Scotch Parliament—with only an occasional exception during the troublous years of the reign of Charles I—held its sessions in Edinburgh.

The Riding of Parliament.

The ceremony of the riding of Parliament dated much earlier than the time when the Parliament became permanently settled in Edinburgh. It was as old as the Parliament, and was indeed a feudal ceremony. Its order and details seem often to have been matters of interest to the Scotch kings. In 1465 there was

[1] *Acts of the Scotch Parliaments*, ix. 236, 237.

an Act of Parliament specifying the colour, style and trimmings of the mantles to be worn at the riding by the nobility, the barons, and the burgesses. Again in 1606, when James VI had seated the Protestant bishops in Parliament, he devised suitable robes for the ecclesiastical estate, and rearranged the order of the riding of Parliament. At this time, when the Parliament was acquiring the generally representative character which it was to hold until the Union, when commissioners elected by the freeholders of the shires were beginning to come regularly and in large numbers, the riding was a procession marked by great pomp and ceremony[1]. James VI, "still the school-boy, so delighted with his latest novelty that the world must know all about it," ordered "a grand public display of all the new finery he had brought into existence." He would have "the bishops flaunt their new robes in a solemn riding, and he laid down the order to be held in it." The order which he decreed was first marquesses, then archbishops, after these the earls, then the suffragan bishops, and after them the lesser nobility[2].

Through the Streets of Edinburgh.

With the increase in the number of members of Parliament, and the permanent establishment of Edinburgh as the place of meeting, the riding must have been an increasingly imposing pageant. The procession from Parliament Square to Holyrood House monopolised High Street. The long street from the Square to the Palace was cleared of dirt and impediments, a task which even a Scotch historian concedes to have been one of some difficulty[3]. Vehicular traffic within the gates of the city was stopped. A passage through the centre of the long street was railed in. The Edinburgh magistrates provided a civic guard to the extremity of their dominion at the Nether-Bow Port, and the royal footguards lined the way from the Nether-Bow Port to the gates of Holyrood House[4].

Costume and Trappings.

From the time when Parliament imposed penalties on absentees from its dyets, it also imposed penalties on members of the estates who did not mount horse and take part in the riding. But as ceremonial attire, trappings for a horse, and the service of attendant lackeys all cost money, and as commissioners from shires and burghs were not men of wealth, it was decreed by the Act of Parliament of 1661[5], establishing wages and allowances for

[1] Burton, v. 443.
[2] Cf. Burton, v. 443.
[3] Burton, VIII. 84.
[4] Cf. Burton, VIII. 84.
[5] *Acts of the Scotch Parliaments*, VII. 236.

county members, that constituents should also be chargeable with the expenses of their representatives at the ridings. "Because at this time," reads the Act, "some commissioners of shires have been put to extra expense in providing foot-mantles for the riding of the Parliament, it is hereby statute that the Commissioners shall be relieved of the prices thereof to be given into their hands." It was further directed that the cost of the foot-mantles "be raised in the same way and by the same executions as the daily allowance aforesaid." The foot-mantles, however, were not to become the property of the commissioners. With characteristic Scotch thrift, the Act directed that at the end of each Parliament, the commissioners should make "the foot-mantles over to the shire, to be disposed of as they shall think fit." The nobility were not paid for their attendance in Parliament. It was an obligation on them which went with the tenure of their land; and they had to find their own trappings of medieval pomp for the riding. Commissioners from the burghs rode with one lackey in attendance. There were two lackeys for each commissioner for the shire: another device for marking the distinction between barons and burgesses.

The Last Riding.

Burton prefaces his account of the last of the Scotch Parliaments with a picturesque description of the riding from Holyrood House to the Parliament House. "The first movement of the day," he writes, "was by the officers of state, who preceded one hour before the rest of the members, to arrange matters for their reception. The Lord High Constable, with his robe and baton of office and his guard ranged behind him, sat at the Lady Stairs by the opening of the Parliament Close, to receive the members under his protection, being officially invested with the privilege and duty of the exterior defences of the Parliament House. He made his obeisances to the members, as they dismounted and handed them over to the Lord Marischal, who having the duty of keeping order and protecting the members within the House, sat at the door in all his pomp to receive them. The procession, according to the old feudal usage, began diminutively and swelled in importance as it went. The representatives of the burghs went first; then after a pause came the lesser barons or county members, and then the nobles—the highest in rank going last. A herald called each name from a window of the Palace, and another at the gate saw that the member took his place in the train. All rode two abreast. The commoners wore the heavy doublet of the day unadorned.

The nobility followed in their gorgeous robes. Each burghal commissioner had a lackey, and each baron two, the number increasing with the rank, until a duke had eight. The nobles were each followed by a train-bearer; and the Commissioner was attended by a swarm of decorative officers, so that the servile element in the procession must have dragged it out to a considerable length. It seems indeed to have been borrowed from the French processions, and was full of glitter—the lackeys over their liveries wearing velvet coats embroidered with armorial bearings. All the members were covered, save those whose special function it was to attend upon the honours—the Crown, Sceptre and Sword of State. These were the palladium of the nation's imperial independence, and the pomp of the procession was concentrated on the spot where they were borne before the Commissioner. Immediately before the Sword rode the Lord Lion in his robe and heraldic overcoat, with his chain and baton. Behind him were clustered a clump of gaudy heralds and pursuivants, with noisy trumpeters proclaiming the approach of the precious objects which they guarded. Such was the procession which poured into that noble oak-roofed hall, which still recalls by its name and character associations with the ancient legislature of Scotland[1]."

[1] Burton, VIII. 84, 85, 86.

# CHAPTER XXXVIII.

## BURGH REPRESENTATION AT WESTMINSTER.*

In the foregoing account of the representative system in Scotland precedence has been given to the burghs. The same order will be followed in tracing the history of the Parliamentary representation of Scotland between the Union and 1832. The system of political management which grew out of the Scotch representation at Westminster in these one hundred and twenty-five years, the method by which all real freedom of election and all political independence were eliminated, has already been described. What now remains to be considered concerns only the few changes which were made by the Parliament of the United Kingdom between the Union and the Reform Act of 1832: the mode of conducting elections after the Union; and the developements, chiefly in the county representation, which took place after a county vote became of value to its possessor.

Changes between the Union and 1832.

After the Union disputed election cases from Scotland were dealt with like cases from the English counties and boroughs. But although half a century intervened between the Union and the first of the Grenville Acts, there was in this period none of the warping of burgh franchises such as had been going on for generations in the English boroughs before the establishment of Grenville Committees. The franchises of the Scotch burghs were already so narrow when Scotland came into the Union that controverted elections from Scotland afforded few opportunities for the House of Commons or its election committees to make the burgh electorates more exclusive than they had been since the Act of the Scotch Parliament of 1469. Controverted elections from Scotland, unlike those from the English boroughs, never centred about the question of a wider franchise. They could arouse no local popular interest. Whether Scotch controverted elections

Burgh Franchises.

were from the burghs or the counties, except in the famous case of peers' eldest sons decided by the House of Commons in 1708, the interest in them was personal rather than political. Their character was aptly indicated by Wilkes, when Boswell, who was counsel in a Scotch controverted election case, asked him to attend in the House of Commons, and support the side for which Boswell was retained. "Not I!" answered Wilkes, "I'll have nothing to do with it! I care not which prevails; it is only Goth against Goth[1]."

Method of choosing Burgh Members.

Under the Act of 1469 self-elected municipal councils chose Parliamentary commissioners as well as commissioners to the Convention of Royal Burghs, and municipal officers. From the Union until 1832, instead of the municipal councils of each royal burgh electing as of old a commissioner to Parliament, the royal burghs, with the exception of Edinburgh, were formed into fourteen groups. In some of these groups there were three burghs. In others there were four or five. Whenever a Parliamentary vacancy was to be filled, the municipal council of each burgh within the group elected its delegate to a convention, and at this convention the member of the House of Commons was chosen.

An American Parallel.

There was no such electoral machinery in connection with Parliamentary representation in England. In Wales, from its inclusion in the representative system in the reign of Henry VIII, boroughs were associated in groups for the return of members to Parliament; but the elections in these Welsh constituencies were direct, and the convention had no place in the electoral machinery. The Scotch method of burgh representation between the Union and 1832 resembles more the machinery by which the President is elected in the United States than any other representative institution in British Parliamentary history. The American electors, when they go to poll in November every fourth year, do not vote for candidates for the Presidency. The names of these candidates are not on the ballots. At this stage of the election the candidates have no status under the Constitution. The electors vote for Presidential Electors, so many for each State, in accordance with its representation in Congress. Two months later these Presidential Electors, chosen by popular vote, meet at the capitols of each State, and there cast their votes for President. By the Constitution it was intended that the

[1] Fitzgerald, *Life of Boswell*, II. 24.

Presidential Electors should use their own judgment in casting their votes; but since the developement of the party system this has been a fiction; and Presidential Electors now so invariably vote for the Presidential candidates nominated at the National Conventions of the political party to which they severally belong, that these meetings are entirely formal, and arouse not the least popular interest.

Instructions to Delegates.

Under the system by which members of Parliament were chosen from the groups of burghs in Scotland, the election devolved upon the delegates. There was no law to prevent them from voting for whom they pleased. They were bound neither to receive nor follow any instructions from the municipal councils which had chosen them. Although the delegates from the Scotch burghs were thus in the position neither of proxies nor attorneys, but were regarded in law as men whom their respective burghs judged best qualified to choose a member to represent the group of burghs in Parliament, and in such choice were entirely independent of their constituents, there is no record of any instance in which a delegate voted contrary to the wishes of his burgh, until the general election of 1761[1]. Like the delegates to American nominating conventions, the Scotch delegates were often instructed by their constituents for whom to vote. At the election of 1818 twelve out of the twenty-one members of the council of the burgh of Inverkeithing signed an agreement "to vote for no person to be a delegate for that burgh who would not give his vote in favour of Mr Campbell, as the commissioner to be returned to Parliament[2]."

The Presiding Burgh.

In the event of an equality of votes at a convention the delegate of the presiding burgh had a casting vote besides his vote as delegate. The town clerk of the presiding burgh was the returning officer[3]. Hence the zeal of a Parliamentary candidate or of a burgh patron to make sure of the interest of the presiding burgh, and the shifting of the scene of wire-pulling and intrigue from one burgh to another with each recurring election. The machinery for burgh elections established by the Scotch Parliament at the Union was exceedingly slight, and in a short time additions to it had to be made by the Parliament of Great Britain. The Scotch Act of 1707 merely directed that each of the burghs should elect a commissioner, "in the same manner as they are now in use

[1] Cf. Douglas, *Election Cases*, II. 190.

[2] Corbett and Daniell, *Cases of Controverted Election*, 191.

[3] Cf. Douglas, *Election Cases*, II. 187, 189, 190.

to elect commissioners to the Parliament of Scotland," to the convention at which the member of Parliament for the group was to be elected: and that in the event of the votes of the delegates or commissioners being equal, the commissioner for the presiding burgh, the burgh in which the election took place, was to have the casting vote. At the first election after the Union the presiding burgh was to be the one in the group which had been longest of the royal burghs. At succeeding elections the other burghs were to be presiding burghs in turn, and were to take their place according to their position in the list of royal burghs[1].

**Alterations in Electoral System in 1707.**

This was all the machinery established in 1707. Part of it was not new, for the Act of Union only adapted electoral machinery which had been in existence since 1469—an adaptation made necessary by the fact that, while in the closing decade of its existence sixty-seven burgh commissioners were of the Parliament of Scotland, only fifteen members were to be chosen by the sixty-six royal burghs to the House of Commons at Westminster. The establishment of the conventions of burgh delegates; the placing of the casting vote in the hands of the commissioner of the presiding burgh; and the determining of the turns of the burghs as presiding burghs, formed the only contribution of the Parliament of Scotland in 1707 to the system under which, after the Union, the Parliamentary representatives of the groups of burghs were to be chosen.

**Burgh Constitutions.**

At the Union there was no uniformity in the setts or constitutions of the royal burghs. There was much variety in the mode of electing the magistrates and the municipal councils; and in 1709 the Convention of Royal Burghs to some extent stereotyped the setts of the burghs as they existed at the Union. After the Union it was foreseen that it would be necessary to ascertain the mode of choosing the magistrates and the councillors of the different burghs; and accordingly the Convention of Burghs ordered an account of the setts of each burgh to be transmitted to it. The burghs complied with this order, the setts were entered on the records of the Convention: and in subsequent years, when there were disputes as to the election of magistrates and councillors, the setts recorded in 1709 were sometimes submitted as evidence of the constitution of the burgh[2].

[1] Act of Union, 6 Anne, c. 2.

[2] Cf. Douglas, *Election Cases*, II. 460.

Contested Delegations.

The insufficiency of the machinery for burgh elections created by the Parliament of Scotland soon led to what are known in the phraseology of American politics as contested delegations and split conventions; and with these came double returns, and work for election committees at Westminster. Scotch seats were as much in demand immediately after the Union as borough seats in England; and it was inevitable that when it became an object of desire to be of the Parliament, candidates would make it worth while to members of burgh councils to work in their interest in the councils and the conventions at which members of Parliament were chosen. There were frequent cases of contested delegations; cases in which a municipal council, when electing the delegate to attend the convention for the election of the Parliamentary representative, split into factions, each faction electing a delegate to the convention at the presiding burgh. A case of a rival election is recorded by Wodrow. "This month," he writes in his *Analecta* for 1729, "the case of the election of the magistrates of Dumbarton is before the Lords of Session, and both sides are declared unduly elected; and a person such as Dr James Smollett and his son, who have had the direction of that burgh since the Revolution, who are not trading merchants, cannot be elected[1]." The decision Wodrow records is also of interest as showing that the laws of the Convention of Royal Burghs affecting Parliamentary elections had not been entirely abrogated when, at the resettlement of the electoral system at the Union, the Scotch Parliament gave statutory effect to the then recent abrogation of the old law of the Convention, which decreed that commissioners from the burghs must be resident, trafficking merchants. The qualification was still held necessary for delegates, and for members of the municipal councils who elected them.

Burgh Patrons.

There was soon much sharp practice and underhand work in municipal councils when councillors were to be elected or a delegate was to be chosen. National politics soon dominated Scotch municipal elections, much as, all through the eighteenth century, Parliamentary elections were the controlling influence in English municipal politics. "There are great factions and parties in most of them," writes Wodrow of the burgh elections in 1724, "and all focus from the parties in the state and the views particular persons have as to future elections to Parliament[2]."

[1] Wodrow, *Analecta*, IV. 25.

[2] Wodrow, *Analecta*, III. 166.

The burgh manager and the aristocratic burgh patron soon established themselves. Lord Ross actively interfered in the Kirkwall burghs at the first general election after the Union[1]. Wodrow dates the appearance of the burgh manager at Dumbarton as early as the Revolution[2]. He records the activity of Campbell, the Laird of Shawfield, at Glasgow in 1724[3]; notes the Duke of Argyll busy at Aberdeen in 1728[4]; and gives a sketch of the Earl of Islay managing the burgh elections at Edinburgh in 1729[5] much as Dundas managed them there sixty years later. In a letter relative to the Porteous mob, written by a Scotch member of Parliament in 1737, there is a statement which shows that a burgh patron had been going to dangerous lengths in imposing his will on the burgh of Haddington. "I am afraid," writes this reporter of Scotch Parliamentary affairs, "that the House of Commons will be very hard upon poor Lord Milton, on account of imprisoning some of the magistrates at Haddington at the last election[6]."

High-handed Election Methods.

The high-handed method of carrying elections described in this letter from London of 1737 was used at the first general election after the Union. Queensberry was at this time the political manager of Scotland. He was in charge of the elections to the House of Commons as well as of representative peers[7]; and according to Burnet, ministers at court had "laid it down for a maxim not to be departed from, to look carefully to elections in Scotland, that the members returned from them might be in an entire dependence on them, and be either Whigs or Tories as they should shift sides[8]." Through managing Scotland in accordance with this policy, Queensberry was afterwards publicly accused not only of threatening recalcitrant electors with the loss of place and pension—quite an ordinary incident of burgh management, and one by no means confined to Scotland then or later—but also of splitting freeholds, "of obtaining blank warrants to fill up with the names of hostile electors, thus keeping them out of harm's way; of concocting trumpery charges against those known to be

[1] *H. of C. Journals*, XVI. 18.
[2] Cf. Wodrow, *Analecta*, IV. 25.
[3] Cf. Wodrow, *Analecta*, III. 167.
[4] Cf. Wodrow, *Analecta*, IV. 15.
[5] Cf. Wodrow, *Analecta*, IV. 76.
[6] *Maitland Club Miscellany*, II. pt. I. 66.
[7] Cf. Stanhope, *Reign of Queen Anne*, II. 90, 91.
[8] Burnet, *Hist. of His Own Time*, IV. 240.

favourable to rival candidates, and even throwing them into prison[1]."

A Scotch burgh manager seems to have had little hesitation about throwing a man into prison. In 1722 Thomas Scott of Logie, who was managing an election at Montrose, carried four councillors to prison upon pretence of some personal insult or disrespect to himself, but really to get them out of the way until the election was over[2]. In the election at Dumbarton, described by Wodrow in 1729, as being managed by Dr Smollett and his son, Smollett imprisoned one councillor in the Castle of Dumbarton, and marooned another on an island in Loch Lomond, to prevent them from being present at the election[3]. Imprisoning Electors.

Further light on burgh elections in the first twenty years after the Union is obtained from Wodrow's *Analecta* for 1727. He records that the elections for the burghs made more noise than those in the counties, "and," he adds, "the burghs, generally speaking, are split and carried in parties." "But after all," he continues, in the moralising tone which frequently characterises his *Analecta*, "it's plain enough, we want fit men among ourselves of honesty and capacity and influence, and are forced to carry all by money and party. This horrible corruption in the choice of members of Parliament will sometime or other throw us into convulsions, if some remedy be not applied, and where it is, is very hard to say. But as matters stand now, the very charges of elections must bring in mercenary Parliaments, and where they will end nobody can say[4]." Burgh Elections in 1727.

Corroboration of the corruption and irregularities of Scotch burgh elections is to be found in the Act of 1734, which was passed to make good the deficiencies of the machinery for burgh elections created by the Parliament of Scotland. This Act established the machinery of burgh elections which existed from that time to the Reform Act of 1832. The purpose of the Act, as declared in the preamble, was to obviate doubts and disputes, and to prevent false and undue returns[5]. Between the Union and 1734 there was not, so far as I can trace, any statutory connection between the sheriffs of counties and the individual burghs in the fourteen groups. To which burgh in a group the precept for an Act of 1734.

[1] *Somers Tracts*, XII. 627, 628.

[2] Cf. Robertson, *Cases on Appeal from Scotland*, 453.

[3] *Cases on Appeal from Scotland*, I. 28.

[4] Wodrow, *Analecta*, III. 435.

[5] 7 Geo. II, c. 16.

election was directed in this period is a matter of conjecture. Presumably it would go to the presiding burgh. By the Act of 1734, however, sheriffs were directed within four days after the receipt of the writ to issue their precepts to the several burghs within their jurisdiction to elect delegates. The precept was to be delivered to the chief magistrate resident in the burgh for the time being, a provision as to residence which, taken in conjunction with an Act passed ten years later legalising non-residents as delegates from burghs, suggests that before 1734 non-residents were finding their way into the close municipal councils in Scotland.

Forestalling Opposition.

The Act of 1734 further directed that when the chief magistrate received the precept from the sheriff he should "call and summon a council of the burgh together, by giving notice personally or leaving notice at the dwelling-place of every councillor then resiant in such burgh, which council shall then appoint a peremptory day for the election of the delegate, but two free days shall intervene betwixt the meeting of the council and the day on which the election of the delegate is to be made." These were precautions intended to prevent any part of the council being taken by surprise, to prevent meetings of the council of which all members had not had due and timely warning. Wodrow chronicles an election by the Glasgow council in October, 1731, "so managed that the other side knew not of it till the night before the choice, and could not gather any opposition to it[1]."

A Check on Factions.

Another clause of the Act shows that between the Union and 1734 there had frequently been rival delegates to the conventions at the presiding burghs; delegates chosen by factions each claiming to be entitled to cast the vote of the burgh for the election of the Parliamentary representative of the group of burghs. To prevent double elections of magistrates in burghs, "which frequently occasioned double commissions to delegates," it was enacted that "at the annual election of magistrates and councillors for burghs, no magistrate or councillor, or any number of magistrates or councillors, shall for the future upon any pretence whatever take upon him or them to separate from the majority of the councillors who have been such for the year preceding, and appoint or elect separate magistrates or councillors; but shall submit to the election made and to the magistrates elected and appointed by the

[1] Wodrow, *Analecta*, IV. 287.

majority of the town council assembled." If magistrates and councillors separated and elected magistrates and councillors in opposition to those chosen by the majority, their act and election was to be *ipso facto* void; and every magistrate or councillor who concurred in such an election by the minority was to forfeit and lose ten pounds, to be recovered by the magistrates and councillors from whom they separated. The minority, however, was not left quite without means of establishing that its position was regular and that the majority was acting irregularly. The Act made it lawful for any magistrate "who apprehends any wrong done" at an annual election, to bring an action before the court of session within eight weeks after election, for rectifying an abuse or making void the whole election if illegal, and the lords of session were required to hear and determine such cases summarily, and to "allow to the party that shall prevail their full costs[1]."

Burghs left without Corporations.

The court of session did not lack causes under the Act of 1734; and it sometimes happened that the election of both sets of councillors and magistrates was adjudged void. In that event, as the appointed day for the election was past, the burgh was left without a corporation. It consequently fell out from among the royal burghs, and could be restored to its old place only by act of the Crown. From 1767 to 1774 Jedburgh thus forfeited its place as a royal burgh[2]; and confusion followed as to which burgh in the Parliamentary group should be the presiding burgh at the next election of a member to the House of Commons. To prevent such confusion an Act was passed in 1774, regulating the order of presiding burghs in the event of the corporate existence of one of the burghs in the group having been temporarily suspended[3].

Non-Residents admitted to Burgh Councils.

Before the Union, at any rate before the Revolution, there seems to be no ground for believing that the municipal councils in the Scotch burghs were much disturbed by the elections of commissioners to Parliament. Seats were not yet the object of ambition or interest, and the persistence with which the Scotch Parliament upheld the law of the Convention of Royal Burghs, imposing a residential and burgess qualification on commissioners from burghs, almost to the last saved the councils from pressure from outsiders who were anxious to be elected to Parliament. After the Union the residential qualification disappeared; and the Act of 1734 is proof that soon after the Union municipal business in

[1] 7 Geo. II, c. 18.

[2] Douglas, *Election Cases*, II. 458.

[3] 14 Geo. III, c. 81.

Scotch burghs became subordinated to Parliamentary electioneering, as it was throughout the eighteenth century in so many of the Parliamentary boroughs in England. The phraseology of the Act of 1734 with respect to the delivery of the sheriff's precept suggests that burgh patrons or their nominees were finding their way into municipal councils, chiefly with a view to the votes and influence they could exercise at Parliamentary elections; and that non-residents were at this time actively interested in the election of delegates is proved by an Act of Parliament passed in 1743[1]. This Act legalised the election of non-burgesses as delegates to the convention, and must have been almost as useful to the Scotch burgh patrons as was the Last Determinations Act to borough owners in England; for it enabled the burgh managers to secure the election as delegates to the conventions of men on whom they could absolutely depend. The Act provided that it was not to be an "objection to any commissioner for choosing a burgess" that he was "not a residentiar within the burgh, bearing all portable charges with his neighbours," or that he was "no trafficking merchant therein," or that he was not in possession "of any burgage lands or houses holden of the said burgh," and that "such qualification need not be engrossed in his commission, any law, custom, or usage to the contrary notwithstanding."

**Another Attempt to suppress Factions.**

There was a clause in the Act of 1743 which warrants the supposition that the Act of 1734, despite its drastic character and its penalties, had not put an end to rival delegations at meetings at which members of Parliament were chosen. It directed that the common clerk of the presiding burgh should allow the votes of such persons only as produced commissions "authenticated by the subscription of the common clerk and the common seal of the respective burghs within the district." In the English freemen boroughs in which the municipal councils were in indirect control of the Parliamentary elections, when the council split into factions, success often lay with the faction which was in possession of the corporate seal and could make freemen. In the Scotch burghs after 1743 it must have been useless for factions to hope for success, unless they could get the common clerk on their side and command the corporate seal.

**Legislation favourable to Burgh Control.**

English borough patrons had to depend on election committees for determinations to enable them to keep boroughs within their control. Scotch burgh masters seem usually to have been able to

[1] 16 Geo. II, c. 11.

obtain Acts of Parliament to strengthen their hold on the burghs. The Act of 1734, entrenching a majority in a burgh council, must have made it easier for a burgh patron who had the majority on his side to ward off opposition: while the Act of 1743, legalising the election of outsiders as delegates to the district conventions for choosing members of Parliament, was obviously in the interest of patron control. This law made it possible for candidates for Parliament to be elected as delegates to the convention at which the member was elected, and in these cases the candidate who was most firmly established usually contrived to be chosen as delegate from the presiding burgh. Then, in the event of a tie in the convention he had a casting vote, and gave it in his own favour[1].

Non-residents in the Municipal Councils.

The inroad on the residential qualification for delegates from burghs was followed by the intrusion of outsiders into the municipal councils. Outsiders went into the councils to protect Parliamentary interests as, a century earlier, English borough patrons had begun to go into the municipal corporations; and before the eighteenth century was at an end the House of Lords had overridden a decision of the court of session, and decided that the provost and councillors of a burgh need not be resident burgesses, or inhabitants of the burgh[2]. This decision was rendered in 1785, in connection with the municipality of Anstruther Easter, where, about that time, Sir John Anstruther, Philip Anstruther, John Anstruther, and Gavin Hogg, Sir John Anstruther's butler, had all been chosen of the council to safeguard the Parliamentary interest of the Anstruther family.

Government and Burgh Control.

English borough owners in the eighteenth century were never all of one political party. Whigs as well as Tories were in control of boroughs. In Scotland, from the Union until 1832, there were no real party lines among the landed proprietors who controlled county and burgh elections. They acted continuously with Government; and when Government carried through Parliament an Act, like that of 1743, they were making burgh electioneering easier for men who were nothing more or less than the local agents of the Government's political manager for Scotland.

Burghs under Control.

A typical picture of the political relations existing between local landowners and municipal councils and landowners and Government, about the time that the Act of 1743 was passed, is to be found in a letter written by the Earl of Kintore to General

[1] Cf. Corbett and Daniell, *Cases of Controverted Election*, 179.

[2] Cf. *Cases on Appeal from Scotland*, III. 22.

Keith, shortly before the general election of 1747. Keith had asked the Earl of Kintore to elect him for the Elgin group of burghs, with which Kintore had a territorial connection. "As for your prospect of being member of the next Parliament, and standing candidate for that district of burghs in which I have some concern," wrote the Earl, on the 27th of October, 1746, "I hope you will always believe that nothing on earth could give me greater pleasure than to be able to do you a service in any thing, and that you may command any interest I have upon every occasion when it can be of use to you. But, as a friend, I think myself obliged to tell you my opinion freely in this matter, and to let you know the present situation of these burghs, which are Elgin, Banff, Cullen, Inverary, and Kintore. The first two depend on no particular person, but are determined sometimes one way, sometimes another, from different motives, and generally the candidate who gives the most money has the best chance of their votes[1]. Cullen depends on E. Findlater, who always goes alongst with the court, and gives his interest to the person recommended by the ministry. The last two towns did for a long time depend on my family, as Kintore still continues to do. But some time before the last elections, Inverary was carried off from me by one Burnet of Kernnay in my neighbourhood, and still continues under his influence. I have been at a great deal of pains to recover my interest there; but have not yet been able to prevail, and although I will still continue my endeavours, the success is very uncertain. If you can have interest to procure the recommendation of the ministry in your favour you can scarce fail of success, as you will be sure of Cullen and Kintore, and will have only one town more to make. But without that assistance I am afraid it will be in vain to make the attempt; for in case you have not heard of my particular situation, I must let you know that my affairs have fallen into disorder. I was obliged to consent to a voluntary sequestration of my estate, and to put it under the management of trustees for the payment of my creditors; so that at present I draw not a shilling for it, and have nothing to depend on for the subsistence of my family but the office[2] I enjoy by the bounty of the Crown. I hope in a very few years my debts will be paid, and my affairs will be again in good order. But in the meantime, if I should act any

[1] Cf. Wight, *Rise and Progress of Parliament*, 347, 348, 349.

[2] Kintore was Knight-Marshal and had formerly been a pensioner of the Government. *Letters of Lord Grange*, Spalding Club Miscellany, III. 40.

part that might give offence to the administration it would ruin me, which I dare say you are too much my friend to advise[1]."

Argyll and Government.

The relations with Government brought out in the Earl of Kintore's letter to General Keith were not peculiar to burgh patrons. In the closing years of the eighteenth century the Duke of Argyll was in control of the County of Argyll, and was also patron of the burgh of Campbelltown. Most of the freeholders of the county were of the Duke's family and name, and were personally attached to him. Under these conditions he could have little of such opposition as the Earl of Kintore had to encounter at Inverary; yet when the confidential report on the Scotch counties was prepared in 1788, there was in it a statement that "the Duke, it is thought, would be in a very troublesome situation, unless he was acting with the administration[2]."

Office-holding Members.

Keith, the Earl of Kintore's kinsman and correspondent, lacked the interest necessary to procure a recommendation from the ministry. The Elgin burghs were represented in the Parliament of 1741–47 by Sir James Grant, surely a typical office-holding Scotch member; for he was Paymaster of Foreign Pensions, Overseer of the King's Swans, and a Principal King's Remembrancer in the Exchequer in Scotland[3]. Grant was succeeded in the representation by William Grant, who was Lord Advocate from 1748 to 1754[4], an office in which, twenty-one years later, Henry Dundas began his career as the last and most famous of all the political managers of Scotland.

Burgh Councils and Management.

The Earl of Kintore, according to his letter of 1746, was in a peculiarly unfortunate position for a burgh patron. He had no money to spend, and his utter dependence on the Government put him at a disadvantage in obtaining offices for his adherents, favours of the kind which so largely formed the currency for both burgh and county electioneering in Scotland all through the eighteenth century. For other Scotch burgh patrons, men who had money at their command, or who, if they had not money, had Government offices to bestow, the task of burgh managing must have been easier than was borough management for men of wealth in England. Here and there the burgesses in the Scotch burghs got free from the Act of 1469 which made the magistrates

[1] *Hist. MSS. Comm. 9th Rep.*, App., 228.

[2] Adam, *View of the Political State of Scotland*, 41.

[3] Beatson, *Chronological Register*, I. 290.

[4] Beatson, *Chronological Register*, I. 290.

and municipal councils self-elective. But these were isolated instances, and even where the people recovered the right of electing the magistrates and the town councils, the right of electing the delegates to the conventions at which members of Parliament were chosen remained, as in the municipalities still constituted under the Act of 1469, in the hands of the magistrates and town council. To the last there were twenty-five royal burghs in which the magistrates and town councils were absolutely self-elective[1]. In other burghs, the only element of popularity was the part which the trade guilds had in the election of magistrates and councillors, an element of little value after the Union, when seats in Parliament were in demand and forces were at work in the municipal life of the burghs such as are described in the Earl of Kintore's letter.

Number of Burgh Electors in 1831.

The membership of Scotch corporations ranged in number from nine at Kintore, to thirty-three at Edinburgh[2]; and in 1831 only one thousand three hundred and three persons had any direct and legal part in the election of the fifteen members from the Scotch burghs[3]. In many of the groups there were five burghs; so that to be in a position to name a member for the House of Commons from a group, it was necessary that the patron should control the municipal councils in three of the burghs. At most, burgh patrons had seldom more than fifty electors of delegates to deal with, and although the management of two or three Scotch municipal councils could not have been as easy as controlling such English boroughs as Gatton and Old Sarum, or the Isle of Wight boroughs of Newport, Newton and Yarmouth, so long under the absolute and unquestioned sway of the Holmes family, the work of the Scotch burgh manager, with a fair amount of Government patronage at his command, must have been easier and made fewer calls on his time, patience and purse, than the management of a large freeman or corporation borough in England, in which the constituent elements were necessarily subject to more or less change, and in which every newcomer who had vote and influence was disposed to hold out for his price.

Burgh Patronage universal.

Oldfield was not so familiar with the Scotch burghs as he was with the boroughs of England. Scotch burghs were seldom put on

[1] Cf. *Mirror of Parl.*, 1833, iv. 3730.

[2] Oldfield, vi. 165, 173.

[3] Lambert, "Parl. Franchises, Past and Present," *Nineteenth Century*, December, 1889, 949.

the market; and it was as a seat-broker that Oldfield obtained much of his first-hand information. He is, however, precise in his statements as to the patrons of the Scotch burghs; and these statements show that in 1816 Edinburgh had its patron, and so had each of the fourteen groups which, with Edinburgh, elected the fifteen members from the burghs to the House of Commons[1].

Qualifications of Burgh Members.

From 1710, when landed qualifications were established for county and borough members in England, until long after the Reform Act of 1832, the fifteen members from the burghs of Scotland were distinguished from English members in that they had no need of a property qualification. After the old law of the Convention of Royal Burghs as to the qualifications of burgh commissioners fell into desuetude no new qualification was imposed on Scotch burgh members. The precepts commanded the election of burgesses; but so did those in the English boroughs, many of which for generation after generation were represented by non-residents. In some of the groups of burghs the candidates were made honorary burgesses, but the conferring of an honorary burgessship on a non-resident candidate for a Scotch group of burghs was not in any degree necessary to his qualification as a member of Parliament[2]. It doubtless helped, as in the English boroughs, to extort from candidates some contribution to the burgh treasury. Members for the counties of Scotland had, until 1832, to be freeholders in the counties they represented, in accordance with the terms of the resolution of the Scotch Parliament which abrogated the old combined residential and freeholder qualification and made the freeholder qualification sufficient. But from all the Acts of Parliament passed between the reign of Queen Anne and 1832, imposing property qualifications on members of the House of Commons, all the members from Scotland were excepted. The establishment of such qualifications for Scotch members might have been objected to as in contravention of the Articles of Union which declared that all who were capable of being elected to the Parliament of Scotland should be capable of being elected to the Parliament of Great Britain.

A Proposed Property Qualification.

The first exception in favour of Scotch members, that in the Act of 1710, was made while the compact at the Union was still fresh; and between then and 1832 it was never proposed to assimilate the law as to qualification in the two countries. When

[1] Cf. Oldfield, VI. 164–208.

[2] Cf. Douglas, *Election Cases*, II. 205, 206, 207, 219.

the bill for the reform of the Scotch representative system was before the House of Commons in 1832, it was at first proposed by the Grey Administration to insert a provision by which all persons were rendered ineligible to sit as members who were not possessed of heritable property. For county members the property was to be of the value of six hundred pounds, and for burgh members three hundred pounds a year. Objection was made to the change. To meet it Lord Althorpe, who was in charge of the bill, proposed to amend the clause so as to leave the law as it stood with respect to burghs, and to fix the county qualification at four hundred pounds. "But," writes Roebuck, "he spoke in such a hesitating and half-hearted fashion, that the feeling of the House compelled ministers to go one step in advance of their original intention, and the Lord Advocate moved to withdraw the proposal to continue the qualification for counties; and so members are eligible to sit in Parliament for a Scotch county or burgh without any property qualification whatever[1]." By the Reform Act the old freeholder qualification for members for Scotch counties disappeared; and both county and burgh members for Scotland were exempted from laws which were applicable to members from English and Irish constituencies until all property qualifications were abolished by the Act of 1858.

Members from Scotland exclusively Scotch.

So far as the representation of Scotch constituencies by Englishmen or Irishmen is concerned, had the Scotch Parliament, when it was remodelling the representative system at the Union, re-enacted the old combined residential and freeholder qualification for counties, and reaffirmed the old law of the Convention of Royal Burghs as to the qualifications of Parliamentary commissioners for burghs, it would not have made Scotch seats much more exclusively the possession of Scotchmen than they were from the Union until 1832. The freeholder qualification for members for counties had the effect, during these one hundred and twenty-seven years, of restricting the representation of Scotch counties to Scotchmen; while of the five hundred and thirty-five members for the fifteen groups of burghs elected to the twenty-eight Parliaments which intervened between the Union and 1832 not more than ten of those who took their seats were Englishmen.

Exchange of Seats with Englishmen.

The first variation from the uniform practice of electing Scotchmen to represent the Scotch burghs, so far as can be traced from an examination of the lists of members, official and extra-

[1] Roebuck, *Hist. of the Whig Administration*, II. 396.

official[1], did not occur until the Parliament of 1741–47. To that Parliament Viscount Granard, an Irish peer with estates in Ireland, but with the Scotch name of Forbes and of Scotch descent, was elected for the Ayr burghs[2]. From this Parliament until that of 1775–80 it does not seem possible to trace the name of a single Englishman or Irishman in the list of Scotch burgh members. In the Parliament of 1775–80 the Hon. George Damer, eldest son of Lord Milton, sat for the Crail group of burghs from 1778 to 1780[3], and with the one historic exception of Fox, Damer was apparently the only Englishman who represented a Scotch constituency between the Union and the end of the eighteenth century. Damer had been member for Cricklade from 1768 to 1774, and his election for the Crail burghs suggests that this was one of the earliest of those family interchanges, which occur in the last thirty years of the unreformed House of Commons, by which Scotch peers who were patrons of burghs, nominated Englishmen as their members, in return for the election of their eldest sons in English boroughs controlled by English patrons.

Peers' Eldest Sons and Scotch Elections.

At the first election after the Union Lord Haddo, son of the Earl of Aberdeen, and three other eldest sons of Scotch peers were elected by Scotch constituencies: and following their election, there was an organised movement to rescind the old Scotch law which decreed that eldest sons of peers could not be of the Parliament. At the Union this question had given much trouble in the Scotch Parliament. "The Commissioners for shires and burghs combined to have it declared," wrote Seafield to Godolphin from Edinburgh, on January 28th, 1707, "that the eldest sons of peers should be incapable to elect or be elected for any shire or burgh. The Commissioner and all the nobility joined against this proposition; and we so managed it that several of the Commissioners for shires and burghs joined with us, and we got that proposition rejected, and the election of shires and burghs is left to proceed according to the present laws of the Kingdom[4]."

Petition against a Peer's Eldest Son.

The test in the House of Commons in 1708 came on the question as to whether Lord Haddo, who had been elected for Aberdeenshire, should be permitted to take his seat. There was

[1] *Official List*; Beatson's *Register*; and Foster, *Members of Parliament from Scotland*.

[2] *Official List*, pt. II. 96.

[3] Foster, *Members of Parliament from Scotland*, 94; *Official List*, pt. II. 160.

[4] *Marchmont Papers*, III. 446.

a petition from some of the freeholders, in which it was set out that Lord Haddo, by the terms of the legislation at the Union, was disqualified through his being the eldest son of a Scotch peer, and that, if he were not prevented from taking his seat, a precedent would be established, and in consequence "the electors and freeholders in future time will never be able to withstand so powerful an interest, but rather, by continual discouragement, the majority of them must become subservient to the nobility, in depressing all those who shall have the courage to resist their encroaching upon or giving up the rights and privileges of the Commons." The Aberdeenshire freeholders further prayed that the House of Commons would "take the matter into consideration, not only as it relates to a present encroachment made on the petitioners' particular rights and privileges; but, what is of far greater importance, as in all probability it will in a very short time sensibly affect the very well-being and constitution of the British House of Commons, by bringing our small representation into the hands of a numerous and powerful peerage, the consequence thereof they have too great cause to fear[1]."

Debate on the Petition.

The House ordered the petition to be taken into consideration on Tuesday, the 3rd of December, 1708. On that day counsel was heard in support of Lord Haddo's claim to take his seat, and a motion was made, "That the eldest sons of the peers of Scotland were capable by the laws of Scotland, at the time of the Union, to elect or be elected as commissioners for the shires and burghs to the Parliament of Scotland, therefore by the Treaty of Union are capable to be elected to represent any shire or burgh in Scotland to sit in the House of Commons of Great Britain[2]." The burden of the opposition to this motion fell on the Scotch members. "The Scottish members," writes Mackinnon, "did not argue the question from the standpoint of constitutional law alone. Mr Dugald Stewart pointed out the menace which the admission of this unconstitutional claim would prove to the liberty of elections in Scotland. The vast influence of the peers, their jurisdiction in civil as well as criminal affairs, the temptation to use their powers by means of bribes and threats in the service of their political predilections, would expose the country to the abuses of tyranny and corruption. If the Scottish Parliament, in which peers and commoners deliberated together, found it necessary in the interests

[1] *H. of C. Journals*, XVI. 23.
[2] *H. of C. Journals*, XVI. 27.

of freedom to guard the rights of constituencies from undue aristocratic influence, how much more did this limitation concern the interests of the British House of Commons, whose will was exposed to the restriction of a separate House of Peers. The admission of such a claim would inevitably tend to enhance the influence of the Lords, to the detriment of free legislation by the Commons. It was thus, he argued, in the interest of the House of Commons to protect the rights of the Scottish electors[1]." Government supported the Aberdeenshire petitioners. The Scotch members as a unit took the same side. The English sense of fairness, quickened by the traditional jealousy between the two Houses, impelled many of the English members in the same direction[2]; and, to quote from the Journals, the motion "passed in the negative[3]."

Peers' Sons excluded.

With Lord Haddo there had been elected to the Parliament of 1708 Lord Strathnever, son of the Earl of Sutherland, for the Taine group of burghs; Lord Johnston, son of the Marquis of Annandale, for both the counties of Dumfries and Linlithgow; and John Sinclair, eldest son of Lord Sinclair, for the Kinghorn burghs[4]. A new writ followed the decision against Lord Haddo. New writs were also issued in respect of the other elections[5]; and from 1708 until the end of the unreformed Parliament, the eldest sons of Scotch peers were as rigorously excluded from the representation of Scotch constituencies as they had been from the old Parliament at Edinburgh. In 1780, when the Duke of Richmond was advocating Parliamentary reform, one of the provisions of the bill which he submitted to the House of Lords made eldest sons of Scotch peers eligible to seats in Parliament for burghs in Scotland[6]. Like many other Parliamentary reform bills of the period between the American Revolution and 1832, the Duke of Richmond's bill failed, and there was no change in favour of the sons of Scotch peers until the Reform Act for Scotland, which in 1832 followed the Act for England and Wales.

Scotchmen in English Constituencies.

There was, however, no law to prevent the eldest sons of Scotch peers from representing English constituencies, although in 1768 there was a movement outside Parliament for the exclusion from the House of Commons of the eldest sons of both English and

[1] Mackinnon, *Union of England and Scotland*, 365, 366.
[2] Cf. Mackinnon, *Union of England and Scotland*, 367, 372.
[3] *H. of C. Journals*, xvi. 27.
[4] *Official List*, pt. ii. 16, 17.
[5] *Official List*, pt. ii. 16, 17.
[6] *Parl. Hist.*, xxi. 688.

Scotch peers[1]; and from soon after the Union the sons of Scotch peers and many Scotchmen not connected with the peerage found their way into the House as representatives of English constituencies, almost invariably of English boroughs.

An Exchange of Scotch and English Seats.

In the last sixty years of the unreformed House of Commons the sons of Scotch peers were occasionally brought into the House for English boroughs by the Government. George Selwyn's borough of Ludgershall was on one occasion so used by the Treasury, through an arrangement between Lord North and Selwyn[2], an arrangement which accounts for the fact that Selwyn's name appears in the list of Scotch members returned at the general election in 1768[3]. In the preceding Parliament Selwyn had sat for Gloucester, a city at that time almost as much under his control as his borough of Ludgershall. At the election of 1768, much to the amazement and disgust of Selwyn and his intimate friends, the Earl of Carlisle and Gilly Williams, Selwyn's control of Gloucester was disputed, and a timber-merchant of the city was nominated in opposition. Selwyn correspondence at this time shows that he was apprehensive of the result of the election[4]; and moreover it illustrates the spirit in which eighteenth century borough masters and their friends regarded opposition when it came from a plebeian quarter. Williams wrote of the Gloucester timber-merchant as "this damned carpenter[5]," whose opposition would add to the expense of Selwyn's return; while the Earl of Carlisle, himself a borough owner, asked Selwyn, "Why did you not set his timber-yard ablaze?" and further, "What can a man mean who has not an idea separated from the foot square of a Norway deal plank, by desiring to be in Parliament[6]?" Arrangements were made which left open to Selwyn a line of retreat in case the timber-merchant was elected; and at this general election Selwyn was returned for the Wigton burghs, as well as for the city of Gloucester. The Wigton burghs were then under the control of the Earl of Galloway; and at the same election Lord Garlies, the eldest son of the Earl of Galloway, was returned for Ludgershall, in company with Peniston Lamb, after-

[1] Stacy, *Hist. of Norwich*, 9.
[2] Jesse, *George Selwyn and His Contemporaries*, II. 383.
[3] *Official List*, pt. II. 148.
[4] Cf. Jesse, *George Selwyn and His Contemporaries*, II. 280.
[5] Jesse, *George Selwyn and His Contemporaries*, II. 265.
[6] Jesse, *George Selwyn and His Contemporaries*, II. 272.

wards Lord Melbourne and father of Viscount Melbourne, who became Premier in 1833[1].

Selwyn and the Wigton Burghs.

The arrangement that Lord Garlies was to be chosen at Ludgershall was made by Lord North, whose plan was that Selwyn should have the nomination at Wigton in return for the Government nominating Lord Garlies at Ludgershall. "It was proposed to me at the last general election," wrote Selwyn to North on the 5th of April, 1770, when a by-election was pending at Wigton[2], "that if I succeeded in my election at Gloucester, where I was very warmly opposed, I should allow the nomination for my borough of such two members as His Majesty thought proper, and it was signified to me that Lord Garlies and Sir Peniston Lamb would be the persons recommended, if I had no objection to them. I returned them accordingly[3]." North had anticipated that Selwyn would desire to nominate for the Wigton burghs at the by-election, and that he would regard the nomination there as his as long as Lord Garlies sat for Ludgershall. Selwyn, however, naturally chose to sit for Gloucester and not for Wigton, and he desired to have nothing more to do with the Scotch burghs. Judging from a letter to Selwyn these interchanges between English and Scotch borough patrons, even when arranged by the Treasury, were not looked upon by English borough masters with much favour. One of Selwyn's correspondents wrote him, after a by-election at Ludgershall, "I pitied you at being obliged to re-elect Garlies. It is troublesome to repeat these things often[4]." This letter of commiseration was written on the 21st of June, 1768, when Selwyn had re-elected Lord Garlies after his appointment as a commissioner of police in Scotland[5].

Favours reserved for Members.

All through the eighteenth century Scotchmen who were applicants for Government appointments were advised to get into Parliament. In 1733, when Lord Grange, then Justice Clerk, younger brother of the Earl of Mar of Jacobite rising fame, was seeking a military appointment for Erskine the eldest son of the Earl of Mar, the Earl of Islay, who was at this time political manager for Walpole, laid down the conditions on which such an appointment was obtainable. "I was plainly told by Islay," writes Lord

[1] Cf. *Official List*, pt. II. 144.
[2] Cf. *Official List*, pt. II. 148.
[3] Jesse, *George Selwyn and His Contemporaries*, II. 3.
[4] Jesse, *George Selwyn and His Contemporaries*, II. 383.
[5] *Official List*, pt. II. 148.

Grange, "that it could not be done till he was in Parliament, though I represented it would cost him to be twice elected[1]." At this time Grange, who managed the Mar family electoral interest in Aberdeenshire and Stirlingshire, was seeking a pension for himself and a commission in the army for his son. When he acquainted Islay with the favours he desired, he was told that to obtain them he too must be in Parliament[2].

Corruption of Scotch Members.

The currency of spoils so used by Islay, and used with even more profusion by his successors in the management of Scotland, had come into existence between the Revolution and the Union. King William, who as Prince of Orange had already the reputation of being an unscrupulous politician, soon began to act in both England and Scotland in keeping with his reputation. His methods in Scotland, as to offices and pecuniary bribes both to electors and elected, are set out in his letter of 1690 to Melville, Hamilton's successor as Royal Commissioner to the Scotch Parliament[3]. Queen Anne continued the methods that King William had introduced into Scotland; and according to Burnet, whose statements are supported by the recently-published correspondence of the Earl of Cromarty who was one of Queen Anne's managers for Scotland, it was between the Revolution and the Union that the "poor noblemen and poor burghs," who formed a great majority in the Scotch Parliament, became easily purchasable by the Court, and that members of the Scotch Parliament learned "from England to set a price on their votes," and expected to be well paid for them[4]. In 1704 a bill was introduced into the Scotch Parliament intended to stay the corruption which had crept into the Parliamentary system since the Revolution. Its aim was to prevent the bribing of members by appointments to office; to put members of Parliament "at absolute freedom in their voting"; and to obviate "all occasions of tempting them to be anywise biassed in giving their advice and voting in Parliament and Convention[5]." It was a most drastic place bill. It did not, however, become law[6]; and when Scotland came into the Union there was no law disabling

[1] Grange, *Letters*, Spalding Club Miscellany, III. 31.

[2] Grange, *Letters*, Spalding Club Miscellany, III. 35, 41, 42.

[3] Cf. supra, p. 89.

[4] Burnet, *Hist. of His Own Time*, v. 292; cf. Letter from George Mackenzie, First Earl of Cromarty, Edinburgh, Oct. 9th, 1705, *Hist. MSS. Comm. 9th Rep.*, App., 466.

[5] *Acts of the Scotch Parliaments*, XI., App., 59.

[6] *Acts of the Scotch Parliaments*, XI., App., 59.

its members from accepting office, until the famous Act of Queen Anne's reign was extended to Scotland in the first Parliament after the Union[1]. Had there been an effective place Act, a measure on the lines of the abortive Scotch bill of 1704, which contained no provision for the re-election of a member who had accepted office, there would have been fewer Englishmen returned from Scotland, and far fewer Scotchmen in the House of Commons as the representatives of English boroughs.

Their Pursuit of Office.

Every Scotchman who was persistent in the pursuit of office, and most of the sons of peers and lairds were more or less engaged in this pursuit, realized that his best hope was to get into a position where he could serve or hurt the Government. It was for this reason that Boswell pushed his unsuccessful candidature for Ayrshire; that he curried favour with Lord Mountstuart: and submitted to frequent rebuffs from Sir James Lowther[2]. The only way in which the eldest son of a Scotch peer could put himself into a position to serve or hurt the Government was to be elected to the House of Commons for an English constituency; and this exigency of office-seeking in all probability accounts for the arrangement affecting the borough of Ludgershall and the Wigton burghs, which resulted in the return of Lord Garlies for Ludgershall to the Parliament of 1768, and his re-election only a couple of months later, when he became a commissioner of police in Scotland. The board of commissioners was for a long time apparently of much use to the political managers of Scotland. It was no inconsiderable part of the cement of political strength which held the Government forces from Scotland together; for in 1780, when Fox was speaking in favour of Sir George Savile's motion for reform, he applied "some well directed strictures to the pensions or salaries paid at the Exchequer to the commissioners of police in Scotland," and declared that "it cost the nation as much to keep the Scotch in good humour as it had to suppress the late rebellion[3]."

The Galloway and Lonsdale Families.

Another instance of the exchange of Scotch for English borough patronage, again in the interest of the Galloway family, occurred in the Parliament of 1802–6. This time the Earl of Lonsdale was the accommodating borough proprietor; not the first Earl of Lonsdale, the most famous unofficial borough master

[1] 6 Anne, c. 3; cf. Douglas, *Election Cases*, II. 437.

[2] Cf. Fitzgerald, *James Boswell*, I. 281.

[3] *Parl. Register*, XVII. 140.

of the eighteenth century, who gave Pitt his first seat in the House of Commons and who used and snubbed Boswell, but his successor in the title and in the possession of the Lowther Parliamentary interest, William Lowther, second Earl of Lonsdale, who succeeded the first earl in 1802. In July, 1803, William Stuart, second son of the Earl of Galloway, who at this time represented the Wigton burghs, became Lord Garlies, and as heir to a Scotch peerage was incapacitated from sitting as the representative of a Scotch constituency. But as Garlies desired to continue of the House, he changed seats with Graham, one of the Lonsdale members for Cockermouth, and sat as member for that borough until the dissolution in 1806[1]. In the Parliament of 1806–7 Graham returned to his old constituency, and was succeeded at Wigton by a younger brother of Lord Garlies who had now become Earl of Galloway. The Graham-Garlies interchange was arranged by Dundas, who was friendly with Lonsdale. On the impeachment of Dundas, then Lord Melville, in 1806, the Lowthers refrained from voting, and kept away from the division most of their nominees[2]. The close relations between the Lonsdale and Galloway families continued to the end of the unreformed Parliament; for in the two Parliaments which preceded the Reform Act of 1832, John Henry Lowther, who had been member for Cockermouth from 1816 to 1818, sat as member for the Wigton burghs[3]; and a predecessor of his in the representation of Cockermouth, Sir John Osborn, was also Lowther's predecessor at Wigton.

The Englishmen who represented Scotland.

Five of the nine English commoners whose names are to be found in the official lists of members from the Scotch burghs were thus identified with the Wigton group, which was under the control of the Galloway family; and all these members would seem to have owed their connection with the Scotch burghs to the desire of the Galloway family to secure a place in the House of Commons for the heir to the peerage, and to avail itself directly of the advantage of the burgh interest which it possessed as one of the territorial families of Scotland. The Englishmen who were identified with the Galloway family group of burghs were George Selwyn, William Norton, James Graham, Sir John Osborn, and John Henry Lowther. George Damer represented the Crail burghs in the Parliament of 1775–80. John Charles Villiers, son of the

[1] *Official List*, pt. II. 216, 217, 231, 239.

[2] Cf. Ferguson, *Cumberland and Westmorland Members of Parl.*, 218.

[3] Cf. *Official List*, pt. II. 259, 312, 324; 244, 296.

Earl of Clarendon, sat for the Wick burghs in the Parliament of 1802–6; and with two notable instances still to be named, one in the eighteenth and the other in the early part of the nineteenth century, Norton, Damer, Graham, Osborn, Lowther, and Villiers, so far as I can trace, were the only Englishmen who sat for burghs north of the Tweed from the Union until 1832[1].

Fox and Melbourne.

The notable instances were Fox and Melbourne. These were the only Englishmen prominent in Parliamentary history who were of the forty-five from Scotland before 1832. Selwyn in 1768 was chosen for Wigton, but he never sat as a Scotch member. Both Fox and Lamb were in the House as representatives from Scotland. Each of them, however, sat as a Scotch member for only a brief time; and each had taken refuge in Scotch burghs, Fox in 1784, when his seat at Westminster was in doubt; and Viscount Melbourne, then William Lamb, after he had failed of election at Leominster in 1806. In 1784, when Fox and Hood were the Whig candidates for Westminster, and Sir Charles Wray the Tory candidate, the poll began on the 1st of April and closed on the 17th of May. On the 26th of April, when the Westminster poll was not much more than half taken, Fox was chosen member for the Kirkwall burghs, then, and until nearly the end of the old Parliamentary system, under the control of the Sutherland family.

Fox sits for the Kirkwall Burghs.

Fox had apparently little liking for the representation of a Scotch group of burghs. "I am chosen," he wrote on the 7th of May, "for Scotch burghs. Whether this is good or no I doubt; but all my friends think so, and I always think their judgement better than my own with respect to what regards myself in political matters[2]." The foresight exercised by the political intimates of Fox turned out much to his advantage. Hood and Fox were at the head of the Westminster poll when it closed on the 17th of May. But the memorable scrutiny followed; and it was not until the 3rd of March, 1785, that the high bailiff was ordered to return Hood and Fox as members for Westminster[3]. Fox in the interval had been of the House as member for the Kirkwall burghs, for which a new writ was issued on the 18th of April, 1785[4]. He had not, however, been permitted to take his

[1] Cf. Wakefield, *An Account of Ireland*, II. 314.

[2] Russell, *Memorials and Correspondence of C. J. Fox*, II. 269.

[3] Cf. *Dict. Nat. Biog.*, XX. 105.

[4] *Official List*, pt. II. 186.

seat for Kirkwall without protest. It was objected that he was not a burgess; that he was born out of Scotland, and had no estate or property there; and moreover it was objected that he had been chosen in consequence of certain corrupt agreements and other illegal practices on the part of his friends. All these objections were unsuccessfully raised against him, and to unseat him an attempt was made to prove that the law of the Convention of Royal Burghs, defining the qualifications of commissioners, which had been abrogated on the eve of the Union, was still in force[1].

Melbourne's Scotch Seat.

Melbourne sat for the Haddington burghs only during the short Parliament which lasted from December, 1806, to April, 1807[2]. But it was in this Parliament that he first came into prominence as the mover of the address in reply to the Speech from the Throne. In the next Parliament he was returned for the Irish borough of Portarlington, and his connection with the Haddington burghs was so brief that it is ignored by two of his biographers[3].

No Sale of Scotch Seats.

The infrequency with which Englishmen were elected to Scotch burghs and the possibility of ascertaining the circumstances under which nearly every such election took place, warrant the statement that Scotch burghs were never put on the market in the same open way as were English and Irish boroughs. Scotch burghs were fewer in number than Irish boroughs after Ireland had come into the Union. They were so few that they never met the demand among Scotchmen for seats in Parliament; and this Scotch demand, coupled with the influence of the territorial families, the method of election, and the system under which Scotland was so long managed for the Government, may be taken to account for the fact that I have not discovered a single well-authenticated instance of the nomination for a Scotch group of burghs being sold for money, as was so frequently and openly the case with the representation of English boroughs. Burghs occasionally gave their support to a candidate in exchange for the payment of town debts or advances of money[4]; but I have discovered no instance in which a candidate could buy the nomination for a group of

[1] Cf. Luder, *Controverted Elections*, III. 249–253.

[2] *Official List*, pt. II. 238.

[3] Cf. Torrens, *Memoirs of William Lamb, Second Viscount Melbourne*; *Dict. Nat. Biog.*, XXXI. 433.

[4] Cf. Wight, *Rise and Progress of Parliament*, 347, 348, 349.

burghs from a patron. Burgh patrons obtained an equivalent for their nominations. But this equivalent was paid usually in Government pensions and Government patronage; and politically managed as Scotland was by one powerful man, acting always for the Government and with its resources at his command, there could never have been a field in Scotland for the professional seat-broker, acting not for the Government, but as an intermediary between patrons who had nominations in their bestowal for which they demanded ready money, and Parliamentary candidates of both political parties.

The People and Representation.

To the inhabitants of the burghs of Scotland who were not of the municipal oligarchies which from the Union until 1832 elected the members to Westminster, it mattered little whether they were represented by Scotchmen or Englishmen, except perhaps for the national feeling that, if there were Scotch prizes going they had better go to Scotchmen; and for the fact that the Scotch members as a body were ever on the alert for the interests of Scotland. It mattered little to the burgesses at large whether burgh representation was bartered solely to the Government for the spoils of office, for the currency with which Islay or Dundas went to market, or was sold in detail at current market rates like the representation of many of the English boroughs. To the burgesses immediately concerned, to the members of the municipal councils who elected the delegates to the conventions at which members of the House of Commons were chosen, and to those who were sufficiently near to these few electors to obtain some small and indirect share of the spoils, Parliamentary electioneering was much more interesting after the Union than ever it could have been before the disappearance of the Scotch Parliament. But in most of the sixty-six royal burghs the inhabitants who were not of the municipal councils had no part in the elections. There was even less popular political life in the largest of the Scotch burghs than there was in those English boroughs where the municipal corporations or small groups of freemen were in control. In these English boroughs, especially in the last half-century of the unreformed House of Commons, there was usually some movement for a wider franchise, and more or less popular agitation against the municipal oligarchy. In the Scotch burghs there were few traditions as to popular elections; and local agitations for wider franchises, such as marked the municipal and Parliamentary history of the English boroughs at the Restoration and at the Revolution, were useless while Scotland was ruled by an

Islay or a Dundas, and while the Act of 1469, which had been reaffirmed at the Union, was on the statute book.

No Tradition of Popular Elections.

"From the Tweed to John o' Groats, throughout the whole length of that country," said Brougham, when the Parliamentary Reform Bill for Scotland was before the House of Lords in 1832, "there is not within the memory of man, the knowledge of anything like a popular election. As far back as the records of authentic history go there never has been anything deserving the name, or even approaching to a popular election, anything like an election for borough or city, anything which would convey to the mind of an Englishman, or a Welshman, or an Irishman, a notion of what an election is[1]."

Burgh Representation after the Reform Act.

By the Reform Act[2] which Brougham was supporting as Lord Chancellor when he thus described political life north of the Tweed, the representation of Scotland in the House of Commons was increased from forty-five to fifty-three. The eight additional members were allotted to the burghs. Five of the sixty-six royal burghs, Edinburgh, Glasgow, Perth, Aberdeen, and Dundee, then became self-contained constituencies; Edinburgh and Glasgow returning two members, and Perth, Aberdeen, and Dundee one member each. Three of the smallest of the old royal burghs were, for Parliamentary elections, thrown into the counties. For the other fifty-eight burghs the grouping system was continued, but the system which had been established at the Union, by which the municipal councils elected delegates to elect members to the House of Commons, was abolished. These fifty-eight Scotch burghs were now grouped on the principle which had prevailed in the Welsh boroughs since the reign of Henry VIII. But instead of the inhabitant householder electors of the Welsh boroughs of the unreformed Parliament, the electors in the Scotch burghs, as in the boroughs in England after the Reform Act of 1832, were the ten-pound householders. When these ten-pound householders went to poll at the general election at which the first reformed House of Commons was chosen, in December, 1832, Scotland witnessed the first directly popular election of members of Parliament, whether to the old Scotch Parliament or to the Parliament at Westminster, of which any authentic records can be found.

[1] *Mirror of Parl.*, 1832, III. 2972.

[2] 2 and 3 W. IV, c. 65.

# CHAPTER XXXIX.

## COUNTY REPRESENTATION AFTER THE UNION.

Changes at the Union.

ONLY in two particulars was the county representation of Scotland altered at the Union. The number of county representatives was reduced from eighty-one to thirty, and the then recently enacted law of the Scotch Parliament, empowering the representatives of counties to collect *per diem* allowances and expenses from the barons or freeholders, was not embodied in the reorganised representative system as settled by the Scotch Parliament in its final session. In other respects the system was continued on the basis on which it had been placed by the Act of 1681. The law as to the landed qualification of commissioners of the shires, dating from 1669[1], which decreed that a member for a county must be of the electorate of the county which he represented, although he need not be a resident, was continued. So were the laws which excluded from the electorate and from Parliament any man who was of the Roman Catholic faith, laws which applied equally to commissioners from burghs, and which until 1829 differentiated English and Irish members of Parliament from members from Scotland.

Roman Catholics in Scotland.

Papists as such were debarred from the representation of Scotland by statute[2], while Roman Catholics were excluded from the representation of English and Irish constituencies because of their inability to take the oaths of supremacy and make the declaration against transubstantiation. Very few Roman Catholics can have been affected by these enactments. Until the emigration of the Irish to Glasgow and the other large industrial towns, there were comparatively few Roman Catholics in Scotland;

[1] *Acts of the Scotch Parliaments*, VIII. 553.

[2] *Acts of the Scotch Parliaments*, V. 623.

and very few of these, had there been no laws disqualifying them, would have been electors in either the counties or the burghs. The Earl of Marchmont, long in political life, who knew his country remarkably well, once assured George II that "in the South there were not a hundred Papists[1]." Amherst, the historian of the political fortunes of the Roman Catholics in England, computes the number of Catholics in Scotland at the beginning of the nineteenth century at thirty thousand. "Of this number," he writes, "the great majority were Highlanders; and in most of those few towns where a few Catholics began to collect together, as at Glasgow, Greenock, and Paisley, they were chiefly, if not entirely, from the Highlands; and the number remained small, until God sent the Irish people to swell to large proportions the members of His church, and to sing the song of the Lord in a new land[2]." Lord Melville stated in the House of Lords in 1829 that there were at that time in Scotland only ten or twelve freeholders who would have been qualified to vote, and one Catholic peer[3].

Dalrymple Act.

The County Representation Act of 1681, which was continued at the Union, was the measure drafted by Sir James Dalrymple, who was elevated to the peerage as Viscount Stair, by King William. He had been of the Parliament and of the Scotch bench before his flight to Holland in the closing days of the Stuart regime, and is known in institutional history as the Lord Coke of Scotland[4]. There were, between the Dalrymple Act of 1681 and the Union, the Act of 1690, increasing the number of commissioners from the shires by twenty-six; and the Act of 1693, compelling the freeholders of counties to elect their quota of members to the Scotch Parliament. Neither of these Acts interfered with the county electoral system otherwise than in bestowing a larger representation on about one-third of the counties; nor was there any Parliamentary interference with the basal principle of the county franchise between Sir James Dalrymple's Act of 1681 and the Reform Act for Scotland in 1832.

Few Changes between the Union and 1832.

Between the Union and the Reform Act amendments were made in the machinery of county elections, and county voters became liable to new oaths, aimed against the splitting of free-

[1] *Marchmont Papers*, I. 162.

[2] Amherst, *Hist. of Catholic Emancipation*, I. 279.

[3] *Mirror of Parl.*, 1829, II. 1161.

[4] Cf. Innes, *Lectures on Scotch Legal Antiquities*, 6; Fraser, *Election Cases Reports*, I. 398.

holds and against bribery. But except for these changes in detail, when Parliament approached the subject of electoral reform in Scotland in 1832, the county electorate, so far as it was based on legislation, stood as it did when Scotland came into the Union. In these one hundred and twenty-five years there had been important changes in the system. There was in 1832 a class of electors, constituting about half of the total number, not contemplated when Sir James Dalrymple's Act was passed in 1681. But this new class of electors, men who derived their title to vote from naked superiorities connected with land only by the thinnest legal technicalities, had not been created by any post-Union enactments. It had its existence in spite of legislation aimed at its suppression, and it owed its origin and its part in the electoral system to the ingenuity of lawyers applied to the peculiar land system of Scotland under which nearly all the land was held directly from the Crown.

County Electors.

The county electors of Scotland at the Union, whose rights had been reaffirmed or created by the Act of 1681, were the men who were in possession in property or superiority of forty-shilling land of old extent[1] holden of the Crown; or in cases where the old extent was not ascertainable, of land also held from the Crown liable in public burden for four hundred pounds of valued rent. Men so qualified, together with apprisers or adjudgers[2], proper wadsetters, apparent heirs, and life-renters, all enfranchised by the Act of 1681, were the county electors in the quarter of a century which preceded the Union. With the addition of husbands who

[1] The old extent is an ancient valuation of the land in Scotland by the retour, i.e. verdict, of a jury, or inquest, made in order to ascertain the land-tax and the casualties and duties payable to the superior.—Fraser, *Election Cases*, I. 372.

[2] "*Adjudication* is the modern real diligence for attaching land and other heritable estate in satisfaction of debt. It has been substituted for the *apprising*, which seems to have been originally a very summary proceeding, by which, where the debtor was not possessed of sufficient moveable property, the sheriff was authorised to give him notice to sell his lands within fifteen days, to pay the debt, and failing his doing so, to transfer the property absolutely, to the creditor in satisfaction of his debt.... It was, however, by the Act 1672, c. 19, that the adjudication according to the present form was introduced."—Bell, *Dictionary and Digest of the Law of Scotland.* "The subject of votes on adjudication is little more than a matter of curiosity, as there are hardly to be found on record any questions relating to the elective franchise, arising out of the rights of adjudgers."—Arthur Connell, *Treatise on the Election Laws in Scotland* (1827), 158.

voted by virtue of their wives' infeoffments under the Act of Queen Anne[1], and with the exception of proper wadsetters, who disappeared in the eighteenth century, these were the electors who continued to vote for the members from the Scotch shires, until the general election of 1832, which followed the Reform Acts for England and Wales, Ireland, and Scotland.

Machinery of Election.

From 1681, when the Act was passed perfecting the Scotch county electoral system, until 1832, much more machinery was necessary to a county election in Scotland than to a county election in England. The old English county court, as it existed from the beginning of the representative system to the Reform and Redistribution Acts of 1884 and 1885, when organised for a Parliamentary election was simplicity itself as compared with the sheriff's court in the head burgh of a Scotch shire organised for a Parliamentary election in accordance with the Act of 1681 and the amending Acts passed after the Union. At an English county election the sheriff was the only important official known to the law. Everything appertaining to the election was in his hands. At a Scotch county election the sheriff received and returned the writ, as did the sheriff in England. But before a Scotch sheriff could make the return three other officials had a part in the day's proceedings, and two elections had to be made by the freeholders assembled in headcourt before they elected their representative to the House of Commons. These intermediary officials were (1) the freeholder who acted as temporary chairman or president of the court; (2) the preses or, as he would be termed in an American political convention, the permanent chairman; and (3) the clerk of the court, who when the session was at an end and choice of a member of Parliament had been made, returned the writ to the sheriff.

Organising the Head-court.

In American political conventions much manœuvring often takes place before permanent organisation is completed, because the nomination of candidates may depend on the temporary and permanent chairmen. In a divided convention trials of strength frequently come in the organisation; and the group which succeeds in nominating the officers of the convention usually regards its battle as more than half won before the actual work of balloting begins. Similar conditions characterised the freeholder courts at which the thirty members for the Scotch counties were elected to Westminster. There was in the constitution of these courts, and in their method of conducting business, more opportunity

[1] 12 Anne, c. 6.

for manœuvring and intrigue than there was in the ancient and popular county courts, at which, for more than five centuries and a half, knights of the shire were chosen by freeholders in England.

Preliminaries to voting.

Freeholders in Scotland were called upon for some preliminary work in connection with their exercise of the Parliamentary franchise which was not demanded from freeholders in England. All that was required in the eighteenth century of an English freeholder was that he should attend at the county court at an election, if need be take various oaths, and give his vote for the Parliamentary candidate of his choice; and, after the Septennial Act was passed in 1715, this demand on the freeholder seldom recurred more than once in five or six years. Under the Act of 1681 the Scotch freeholder was required, and until as late as the reign of George II could be compelled, to attend a county court held at Michaelmas each year, at which the roll of freeholders was adjusted and the alterations arising from the deaths of freeholders and the sale of freeholds were made[1]. It was at this court that a freeholder, not already on the roll, put in his claim for enrolment. The court had the right to accept or reject a claim, subject, however, to review by the court of session, which could order an enrolment. No freeholder could vote unless he were on the roll.

Growing Interest in Elections.

From the first election after the Union county contests in Scotland were waged with more vigour than had ever attended the elections to the Scotch Parliament. Interest in electioneering increased as years went on; and as the practice of creating fictitious qualifications, which may be dated from the first election to the Parliament at Westminster, became more general, interest in the Michaelmas headcourt, at which the freeholders' roll was revised, became more intense, and there were frequent appeals from the court of freeholders to the court of session. In 1714[2], and again in 1734[3], there were Acts of Parliament to stop the creation of fictitious qualifications; and under these Acts freeholders, assembled in headcourt, obtained larger powers for inquiring into the nature of the qualifications of men seeking enrolment as county electors.

Manipulation of Election Machinery.

Scotch county elections, unlike county and borough elections in England, were determined at one sitting of the headcourt. The court session might extend over many hours, but could not be adjourned. The calling of the court was in the hands of the

[1] Cf. *Marchmont Papers*, II. 123.

[2] 12 Anne, c. 6.

[3] 7 Geo. II, c. 16.

sheriff; and the call was made by proclamations on the market crosses and after 1714[1] on the "most patent doors" of the parish churches. It lay with the sheriff to fix the election day; and if he were a partisan he could, and apparently often did, consult the convenience of his friends and fix the day so that votes could be matured[2]. Moreover sheriffs, at times, arranged the elections so as to make it impossible for some of the voters to be present[3]. Possession of a qualification for a year and a day was necessary to the exercise of the franchise; and as votes were often made with a view to a pending election, the candidate who had the ear of the sheriff was likely to have the election fixed with due regard to the maturity of his votes, and the forestalling of those of his opponent. A well-authenticated instance of this kind of manœuvring occurred in 1820, when Lord Archibald Hamilton contested Lanarkshire against Admiral Cochrane, the Government candidate. Both sides had made votes about a year earlier, and the sheriff so arranged the day of election that the Cochrane votes duly matured, while those made in the interest of Lord Archibald Hamilton did not come to maturity and were excluded[4]. Headcourts were also prolonged by various devices in order that votes might be ripened. Such a prolongation was usually effected by lawyers. In 1823, when Lord Archibald Hamilton was advocating in the House of Commons the reform of the Scotch electoral system, he related an instance where, it being necessary to send a messenger from a headcourt to Edinburgh, the lawyers undertook to talk until the messenger came back, and they did so, although the distance was sixty miles[5].

Chairmanship of the Headcourt.

A headcourt convened for the election of a knight of the shire was opened by the reading of the writ and the statutes against bribery. This was done by the sheriff. The sheriff-clerk next produced the roll of freeholders, and then the freeholder who had been the last representative of the county in Parliament took the chair. This was an extra-Parliamentary duty peculiar to knights of the shire from Scotland. English members of the House of Commons, except in the early days when knights of the shire carried down the writs to their counties, never had any extra-Parliamentary duties at an election. Their legal connection with a constituency, as its representatives, came to an end as soon as

[1] 12 Anne, c. 6.
[2] Cf. Hansard, 2nd Series, ix. 618.
[3] Cf. Dunbar, *Social Life in Former Days*, 216.
[4] Hansard, 2nd Series, ix. 618.
[5] Hansard, 2nd Series, ix. 619.

Parliament was dissolved. The chairmanship of the headcourt which devolved upon the last representative of the county was only temporary. It none the less gave an advantage to a man seeking re-election; for, in the event of a tie on the vote for permanent chairman, the temporary chairman had the casting-vote, and there frequently were exciting and fateful contests over the permanent organisation; that is, over the election of the preses, or permanent chairman, and the clerk of the headcourt[1].

The Casting Vote.

As soon as temporary organisation was effected by the instalment in the chair of the last member for the county, the temporary chairman and all the freeholders qualified by taking the oath of allegiance and, if required, the oath of abjuration. The next step was the taking of the votes for the preses and the clerk. If the last member for the county were absent the votes were taken by the sheriff-clerk; and in the event of a tie the casting-vote then belonged to the freeholder present who had most recently been elected to Parliament for the shire. If no such person were present the casting-vote lay with the freeholder who had last presided at an election meeting; in his absence to the freeholder who had last presided over a Michaelmas meeting; and failing him to the freeholder whose name stood first on the roll. As in most counties the electorates were small, ranging in 1788 from two hundred and five in Ayr to twelve in Bute, while between 1681 and the Union, before the subdivision of qualifying properties to create votes, they were smaller still, all these provisions as to the right to the casting-vote were obviously necessary.

Administering the Oaths.

By the Acts of the reigns of Queen Anne and George II, for preventing the creation of fictitious qualifications, before an elector could vote he might be called upon to take oath as to the nature of his qualification and the conditions under which he had acquired and held it. At first these oaths could by law only be put after the election of preses and clerk. But it became a common though not a universal practice after the Act of George II for the oath of trust and possession, authorised by the Act of 1734, to be put, if required, to the freeholders who were about to vote for preses and clerk. At one of the elections a claimant to vote refused to take the oath at this stage. The headcourt insisted that it should be taken. The case was carried to the court of session and thence to the House of Lords, where it was decided that this oath could not be put until the vote was taken for the election of the member

[1] Cf. *Marchmont Papers*, I. 284.

of Parliament. "A handle," writes Peckwell, "was offered to persons who had not a title to stand on the roll in respect of their being divested of the estates for which they were enrolled, or their circumstances being altered, voting nevertheless in the election of preses and clerk, which was frequently decisive of the election of the member or representative in Parliament, the preses so elected having the casting-vote on all questions[1]." In 1797, however, this opening for sharp practice was stopped by Act of Parliament[2]; and from then until the old representative system came to an end, the oath of trust and possession could be put to an elector before he voted for the preses and clerk.

The Oaths.

The election of the preses and the clerk completed the permanent organisation, and the headcourt was then constitutionally organised and ready to proceed to the election of a member to the House of Commons. At this stage the oath of trust and possession could be put to any elector on the demand of any freeholder; also the oath against bribery, if required by any two freeholders, or by any candidate; and after the rising of 1745, any elector might be tested by means of the formula and the oath regarding attendance at a service in church at which no prayer had been offered for the King and the Royal family[3].

The Oath of Trust and Possession.

The bribery oaths soon became little more than formalities. Not so the oath of trust and possession. Under the laws for the prevention of the splitting of freeholds headcourts sometimes instituted close and searching inquiries into the circumstances under which qualifications had been obtained; and these inquiries were made before the oath of trust and possession was administered. Objections were made to such investigations. A case went to the court of session, and thence to the House of Lords, where it was decided that freeholders in headcourts had a right to investigate the reality of the qualification by other means than putting the oath, and that a freeholder thus challenged could not refuse to reply to the questions put to him by the court[4].

Fictitious Qualifications.

Superiorities created for election purposes had generally the same characteristics. They were made sometimes without the previous consent of the voter. Often a holder of land from the Crown would solicit his friends or dependents to accept freehold qualifications. The expense of making out the title-deeds, which

[1] Peckwell, *Controverted Election Cases*, I. 445.
[2] 37 Geo. III, c. 138.
[3] 19 Geo. II, c. 38; 32 Geo. III, c. 63.
[4] *Cases on Appeal from Scotland*, III. 237.

was quite considerable, for the law processes were long, was usually paid by the grantor. The title-deeds were not delivered to the grantee before the enrolment at the Michaelmas court. The grantee did not regard himself as called upon to defray the expense of maintaining the title in court or elsewhere; and finally, and most important conditions of all, he considered himself as in honour bound to vote for the candidate who was supported by the grantor, and to renounce his freehold qualification at the grantor's pleasure[1].

Questions put by the Headcourt.

From a general knowledge of the conditions usually connected with superiorities made for election purposes, and by virtue of the right of inquiry into an elector's qualification which grew out of the Act of 1734, a set of questions came into use at the headcourts, all of which an elector might have to answer before he could take the oath and give his vote. These were:—

1. Did you apply for your freehold qualification?
2. Was the application made to you to accept of the said freehold qualification, and by whom?
3. Did you pay any price for the qualification, and what was it?
4. Was the expense of making up your titles paid by you or by whom?
5. Did you give any orders for making out your titles, that you might get your name enrolled as a freeholder?
6. Do you derive any pecuniary emolument whatever from your freehold?
7. Do you receive the rents established by your title, or, if not, by whom are they received?
8. Do you consider yourself bound in honour to vote for the candidate whom you believe the grantor favours?
9. Do you feel yourself bound in honour to renounce your right if convenient to the grantor?
10. Would you feel yourself bound in honour to renounce your right, rather than vote against the candidate whom the grantor favours[2]?

Terms of the Oath.

By the trust oath the elector swore that the land and estate for which he claimed the right to vote was actually in his possession, and did really and truly belong to him, and was his own proper

[1] Cf. Fraser, *Reports of Controverted Election Cases*, II. 189; *Caldwell Papers*, II. pt. IV. 236.

[2] Hansard, 2nd Series, IX. 617, 618.

estate and was not conveyed to him in trust, and that the title to the said lands and estates was not nominal or fictitious, created in order to enable him to vote for a member to serve in Parliament[1].

Inefficacy of the Oaths.

In spite of these precautions superiorities were continually made throughout the eighteenth century solely for election purposes. Men perjured themselves with impunity[2]; and when Lord Archibald Hamilton was urging Scotch electoral reform on the House of Commons in 1823, he frankly admitted that superiorities had been made in his interest before the election of 1820, and told the House that his agents had at their call men who were willing to accept such qualifications, and, if need be, take the oath at the headcourt[3].

Election in Headcourt.

Following these oaths at the headcourt came the adjustment of the freeholders' roll, which then stood as it was left after the last Michaelmas revision. The names of the freeholders who had died or become disqualified were struck out, and the names of qualified claimants were added. All disputed points were decided by a majority of votes. Lawyers had their part in these contentions; and at this stage they could prolong the sitting of the headcourt, if a point were to be gained by so doing. When the new roll had been made up, the freeholders proceeded to elect their representative to the House of Commons. The preses called the roll, and recorded the votes of the freeholders present. He declared the name of the freeholder elected, and it then became the duty of the clerk to make the return of the election to the sheriff, who forwarded it to the Clerk of the Crown in Chancery[4]. The final act of the court was to gird the newly elected member with a sword, after the ancient custom of the knights of the shire in England.

Sheriff's Duties.

Under the Scotch system of county elections the duties of the sheriff were much less arduous and responsible than those of the sheriff of an English county. The Scotch sheriff was concerned only with the opening and concluding formalities of the election. All responsibility in connection with contests over disputed votes, and with any litigation which might follow in the court of session, was taken off his hands by the mode in which the headcourt was organised.

[1] Cf. 7 Geo. II, c. 6.

[2] Omond, *Lord Advocates of Scotland*, II. 160, 161; Bell, *Treatise on Election Laws*, 280, 281, 282.

[3] Hansard, 2nd Series, IX. 618.

[4] Cf. Adam, *Political State of Scotland in the Last Century*, xvii.–xxiii.

Headcourts were held at other times than when a member of the House of Commons was to be elected. They assembled annually at Michaelmas; and at these Michaelmas meetings it was within the power of the freeholders to instruct their representative in Parliament. This English constitutional usage was well established in Scotland at least as early as 1739, when the party opposed to Islay and Walpole contemplated moving instructions hostile to the Government at the headcourts[1]. But from the dissipation of this opposition until nearly the end of the old representative system, the county electors of Scotland were almost universally thirled to the Government; and in this long period instructions were resorted to only when electors sought to check a member who was disposed to take an independent line in Parliament. In 1763, after the Peace of Paris, the freeholders of Renfrewshire, then represented in the House of Commons by Patrick Craufurd, declared in Michaelmas headcourt that it was their right and duty to express their sentiments to their representative. Craufurd had condemned the Peace, and by so doing, in the opinion of the Renfrew freeholders, he had insulted the King, and helped to create a faction. "We do therefore," reads the instruction to Craufurd, "admonish and instruct you, our representative, to hold such conduct in Parliament as may testify your and our disapprobation of these factions and efforts, and to concur in such constitutional measures as may be proposed for quelling that licentious spirit, and for deterring bad men from further attempts to weaken the sense of subordination among the people, and the respect due to good order and government[2]." The political relations between county members for Scotland and their constituents were much closer than those between knights of the shire and freeholders in English counties. The member for a Scotch county was necessarily a freeholder, and as such had his place in the Michaelmas headcourt. Even after the law of 1681 compelling freeholders to attend these annual meetings had fallen into desuetude, usage and interest would conduce to the member's attendance: and it is probable that Craufurd was present when his political conduct was so strongly condemned by the Renfrewshire freeholders.

Instructions in Headcourt.

The great change in the county electorate between the Union and 1832 was due to the ingenuity of Scotch lawyers and not to any legislation. Faggot votes, which were as characteristic of the

Incoming of Faggot Voters.

[1] Cf. *Marchmont Papers*, II. 123.

[2] *Caldwell Papers*, I. pt. II. 195; cf. *Official List*, pt. II. 156.

county electorate in Scotland as burgage and potwalloper votes were of borough representation in England, cannot be traced further back than the beginning of the eighteenth century. There is contemporary evidence of splitting of freeholds at the general election which followed the Union when Queensberry and Montrose were contending for dominance and Queensberry was managing Scotland for the Government. Among a series of charges arising out of the election of 1708, preferred by a contemporary Scotch writer against Queensberry, is that of splitting freeholds and thus making fictitious votes[1].

Making of Superiorities.

Douglas and Fraser, both of them Scotchmen, and both learned in Scotch election usages, agree that superiorities began to be made just as soon as election to Parliament from Scotland became an object of ambition or interest[2]. A seat in the Scotch Parliament was thus regarded after 1690; so that, with the contemporary evidence which has been quoted as to Queensberry's use of this mode of swaying county elections, it may be concluded that the making of superiorities began not later than 1708. It was continued until the end of the old House of Commons; for in 1832 there were petitions to Parliament for compensation to the holders of naked superiorities, a species of property which had absolutely no value when the right of voting at county elections in Scotland was no longer confined to men who held from the Crown[3].

Empty Qualifications.

The parchment-voters of the English burgage boroughs possessed a much more real property qualification than the holders of naked superiorities in Scotland. The snatch-papers of a voter in a burgage borough were a title to some real estate, even though it were no larger than a hearthstone. The nearest approach in England to voters for naked superiorities in Scotland were those at Droitwich who enjoyed the franchise as burgesses of the salt springs. Douglas, afterwards Lord Glenbervie, gives an explanation of how these fictitious qualifications for the county franchise were made[4]. Other accounts are also to be found in the political and legal literature of the eighteenth century. But the clearest statement of the process of superiority making which I have been

[1] Cf. *Somers Tracts*, XII. 627, 628.

[2] Cf. Douglas, *Controverted Election Cases*, IV. 198; Fraser, *Controverted Election Cases*, II. 192.

[3] Cf. *Mirror of Parl.*, 1832, III. 2970, 2971.

[4] Cf. Douglas, *Controverted Election Cases*, IV. 198, 199.

able to find, belongs to the literature of the Reform propaganda, and is embodied in the memorable petition for Parliamentary Reform of the Society of Friends of the People, presented to the House of Commons by Charles Grey in 1793. Sir James Mackintosh was the honorary secretary of the society, and, either solely or principally, the author of the petition[1]. He was the son of an Inverness-shire laird; and twenty years after the petition of 1793 he was member for the County of Nairn, and to qualify as a knight of the shire from Scotland, he was the holder of a superiority which had been specially created to make him eligible[2]. The authorship of the petition thus gives additional value to its description of the methods by which fictitious qualifications for county voters were created.

Superiorities Described.

"In Scotland," reads the petition, which in its preceding paragraph had set out the want of an uniform and equitable principle regulating the right of voting in England, and the grievances arising therefrom, "the grievance arising from the nature of the right of voting has a different and still more intolerable operation. In that great and populous division of the kingdom, not only the great mass of the householders, but of the landowners also, are excluded from all participation in the choice of representatives. By the remains of the feudal system in the counties the vote is severed from the land and attached to what is called the superiority. In other words it is taken from the substance and transferred to the shadow; because though each of these superiorities must, with a very few exceptions, arise from land of the present annual value of four hundred pounds sterling, yet it is not necessary that the land should do more than give a name to the superiority, the possessor of which may retain the right of voting notwithstanding he be divested from the property; and on the other hand, the great landlords have the means afforded them, by the same system, of adding to their influence without expense to themselves by communicating to their confidential friends the privilege of electing members to serve in Parliament. The process by which this operation is performed is simple. He who wishes to increase the number of his dependent votes, surrenders his charter to the Crown, and parcelling out his estate into as many lots of four hundred pounds per annum as may be convenient, conveys

[1] Cf. Mackintosh, *Memoirs of Sir James Mackintosh*, I. 80.
[2] Cf. Mackintosh, *Memoirs of Sir James Mackintosh*, II. 263.

them to such as he can confide in. To these, new charters are upon application granted by the Crown, so as to erect each of them into a superiority, which privilege once obtained, the land itself is re-conveyed to the original grantor, and thus the representatives of the landed interest in Scotland may be chosen by those who have no real or beneficial interest in the land[1]."

A Partial Check.

The Acts of Parliament of 1714 and 1734, passed to check such creation of qualifications, had no uniform effect[2]. As may be seen from the account which has been given of the preliminaries to the administration of the oath of trust and possession at the freeholders' court, they enabled a dominant interest in a county to hamper and harass an opposition which was bent on creating superiorities. But where a landlord was in possession of the electoral influence of a county, or where several feudal proprietors were associated in the political control of a county, he or they could make superiorities at will. The only real check to landlord influence, when the landlords controlled the majority of the votes in the headcourt, was the decision in the House of Lords in 1782, in Sir John Colquhoun's suit against his feudal superior, the Duke of Montrose, which thereafter served to safeguard a vassal from having more than one superior[3]. This decision of 1782 had the effect of restricting the number of qualifications for electoral purposes which a superior could make in respect of lands not in his possession, but over which he had retained feudal rights[4].

[1] *H. of C. Journals*, XLVIII. 740.

[2] Omond, *Lord Advocates of Scotland*, II. 160.

[3] "*Superior* is one who has made an original grant of heritable property, under the condition that the grantee shall annually pay to him a certain sum of money, or perform certain services. The grantee is termed the vassal. The interest of the grantor is termed the *dominium directum*, that of the vassal the *dominium utile*. The superior has right to the feu-duties and other services stipulated in the grant, with the casualties which are by law given to a superior; while the vassal enjoys, in the absence of any limitation in the grant, every other right attaching to the subjects, such as fruits, woods, mines and minerals, and the rights of alteration and disposal at pleasure." "The *superiority*, or *dominium directum*, is the right which the Crown, as overlord of all Scotland, or subject-superiors as intermediate overlords, enjoy in the land held by their vassals."—Bell, *Dictionary and Digest of the Law of Scotland.*

"That there shall be a vassal is essential, whenever a freehold qualification is rested on a right of superiority alone."—Connell, *Treatise on the Election Laws in Scotland* (1827), 50, 51.

[4] Cf. *Appeals from Scotland*, VI. 805.

Land-owners Un-represented.

In England in the eighteenth century, as commerce extended and industries were developed, there was a steady increase in the number of freeholders, and consequently in the number of voters for knights of the shire. In those exclusively agricultural counties in which small groups of great landlords were in possession, and intent on maintaining electoral control, the number of freeholders might not vary much from one generation to another. In Leicestershire, for example, there was almost exactly the same number of freeholders in 1830 as there was in 1720. In 1720 the number was five thousand four hundred and twenty-seven, and in 1830 five thousand four hundred and twenty[1]. But in the industrial counties of the Midlands and North the electorate was steadily growing in numbers during the eighteenth century. In Scotland there were also increases in the number of landowners; but, as the petition of 1793 shows, landowning in Scotland and electoral rights were frequently divorced, and a man might be the owner of much landed property and still have no right to a part in the Michaelmas headcourt of his county, or at the court at which the Parliamentary representative of the county was chosen.

Statistics of Voters.

The report on the political state of Scotland in 1788, frequently referred to in these pages, goes in fullest detail into the official and social status of most of the freeholders then on the roll. It gives the voters and the persons controlling votes in each county as well as the names of men and women who then had it in their power to create superiorities. It does not, however, differentiate between the *bonâ fide* freeholders, and the almost equally numerous holders of naked superiorities created in order to make votes. In 1788, according to this report, the number of voters was two thousand six hundred and sixty-two. In 1820, according to a computation made by Lord Archibald Hamilton, it was two thousand eight hundred and eighty-nine; and at the beginning of the century it was estimated that there were twelve hundred faggot voters of the Scotch county electorate[2]. In 1811 the number of landowners in Scotland, according to Sir John Sinclair's return, was seven thousand six hundred and thirty-seven[3]. These statistics of voters, of naked superiorities, and of actual landowners, show to how large an extent "the representatives of the landed

[1] Cf. Curtis, *Hist. of Leicestershire*, I. xxvi., xxvii.

[2] Lambert, "Parl. Franchises, Past and Present," *Nineteenth Century*, December, 1889, p. 949.

[3] *Westminster Review*, No. XXVII. 139.

interest in Scotland might be chosen by those who had no real or beneficial interest in the land[1]."

A Plea for Compensation.

In 1832 and 1835, when Parliament was reforming the Parliamentary and municipal electoral systems of England, Scotland, and Ireland, vested interests advanced their claims for protection or compensation in the House of Lords. The freeman franchises in the English boroughs were continued to existing freemen by the Reform Act in order to facilitate the passage of the bill through the House of Lords. To the House of Lords the wives, daughters, and widows of freemen sent their petitions for compensation for the privileges which they were to lose by the Municipal Reform Act of 1835; and in 1832 the holders of naked superiorities in Scotland petitioned the House of Lords for compensation for the loss of their property from the reform of the county electoral system[2]. It was then stated that these superiorities, created only to make votes, had been long bought and sold in the most open manner; that they formed a species of property on which money was lent; and that a superiority varied in value from two hundred and fifty to two thousand five hundred pounds, according to the political conditions of the county in which it carried a vote. Hospitals and kindred institutions were then in possession of these properties. They were also held in trust for widows and orphans; and for these educational and charitable institutions and these widows and orphans a claim for compensation was strongly pressed by the Earls of Haddington and Aberdeen. "I am not prepared," said the Earl of Haddington, in supporting one of the petitions for compensation, "to go the length of saying that the right of voting is property. But property has here been connected with the right of voting in such manner as to make this the strongest case of vested right that has ever been, in reference to the Reform Bill, brought under the consideration of Parliament[3]." The precedents established by the Heritable Jurisdictions Act of 1746–47, by which compensation was paid to the Scotch landowners for the surrender of their privileges, and by the Act of Union of 1800, under which compensation was paid to the owners of nomination boroughs in Ireland, were cited by the Earl of Aberdeen in favour of similar awards to the owners of naked superiorities in Scotland. It was also pleaded that the holders of these superiorities should at least be permitted to retain their

[1] Petition of 1793.

[2] Cf. *Mirror of Parl.*, 1832, III. 2431, 2434.

[3] *Mirror of Parl.*, 1832, III. 2970.

rights during lifetime. But Lord Brougham, who was in charge of the Scotch Reform Bill in the House of Lords, would make no concessions. It was not possible for the members of the House of Lords who advocated compensation to introduce a money bill; and the result of the discussion was that the petitions for compensation on which the debate had occurred were "ordered to lie upon the table."

County Control.

Under the peculiar electoral system in which these superiorities had such an important part, it was practicable for the great landowners of Scotland to secure and maintain political control with much less expenditure of money than was necessary on the part of English territorial families bent on political dominance in the counties in which their estates lay. During the eighteenth century, and in fact as long as the old electoral system survived, English landed families were not infrequently impoverished by the enormous expenditures necessary to maintain their local political supremacy. Comparatively few of the territorial and governing families of Scotland were in the eighteenth century possessed of the means necessary for electioneering after the fashion in the English counties; and, for two obvious reasons, money was not necessary in Scotland to anything like the same extent as in England. The electorates in the Scotch counties were much smaller than in England; and owing to the working of the feudal land laws, it was often practicable for landed proprietors to keep down the number of electors to the lowest limits. In Scotland also, from the Union until 1832, the electors looked in general for their rewards not to the families to which they were socially and politically thirled, but through the heads of these families to the men who managed Scotland for the Government, and who had all the patronage of Scotland, as well as much of that of the Empire, in their bestowal.

In England.

The freeholders in the English counties were not amenable to money bribes; and they were far too numerous to be much influenced by the bestowal of civil, ecclesiastical, or military patronage. Currency of the kind used in Scotland from the Union to 1832 was seldom seen among the English freeholders[1]. The expenses which fell on the dominant families in England in connection with county elections were due to outlays necessarily attendant under the old representative system on long-drawn-out pollings, and on the conveyance of freeholders, numbered often by

[1] Cf. *Reports of the Civil Service Commission*, 1854–55, VI. 180.

the thousand, from all parts of the shire and of the kingdom to the county town at which the election was held.

In Scotland. There were no corresponding expenditures at county elections in Scotland; and usually the landed proprietors in control of Scotch counties settled their indebtedness to their political dependents by social attentions, and by acting as the agents between their dependents and the Government manager in the distribution of places in the civil service, or commissions in the military forces. The official charges at elections were few and small, and were paid out of public funds[1]. In the seventeenth and eighteenth centuries the smaller proprietors in Scotland were possessed of little ready-money. Much of the rent due to them was payable in kind; and while they could live comfortably at home, few of them could afford to sojourn long abroad[2], or embark on any enterprises for which ready-money was essential. In 1669, when the Earl of Marchmont was endeavouring to induce the Earl of Dunbar, then resident at Emden in East Friesland, to return to Scotland, he assured Dunbar that he knew of several of his rank "who have not of yearly rent free above twelve thousand gilders[3], and an estate of twenty thousand gilders[4] by year free is reckoned a considerable estate to persons of the same rank that you are[5]." At the time of the Union five hundred pounds was considered an adequate marriage portion for the younger son of a Scotch earl[6]; and in Walpole's time a man who had sufficient local weight and influence to secure his election for a county was willing to tie himself to the fortunes of the Government, "to betray and sell the rights of his shire," for a precarious pension of two hundred pounds a year[7]. Large families and small incomes were usually the lot of the smaller proprietors in Scotland in the eighteenth century. To these social and economic conditions the county representative system was adjusted by the successive political managers who were given control of Government patronage distributed in Scotland, and who by the use of this patronage were expected to secure the election of representative peers and a battalion of members of the House of Commons, all pledged to do the bidding of the Govern-

[1] *Report from Select Committee on Election Expenses*, 1833, App., 141.

[2] Cf. Mrs Elizabeth Mure, "Some Remarks on the Change of Manners in My Time," *Caldwell Papers*, I. pt. I. 262.

[3] £1090.

[4] £1818.

[5] *Marchmont Papers*, III. 175.

[6] *Marchmont Papers*, III. 257.

[7] Cf. *Caldwell Papers*, pt. I. 243.

ment, and on all occasions to take their orders from an Islay or a Dundas.

Opposition in Scotland.

In the first half-century after the Union there were at times political divisions in Scotland; occasions when the territorial magnates were at issue with the political managers for the Government. But seldom, so far as I can trace, were differences as to political principles and opinions at the bottom of these revolts. Hamilton, Queensberry, Montrose, Marchmont, Stair, Strathmore, Dundonald, Rothes, and the other peers of the opposition of 1733–34 objected on principle to the way in which Walpole and Islay then governed Scotland, and to other actions of Walpole's administration not directly affecting Scotland[1]. But at bottom opposition from Scotland in the first half of the eighteenth century, which manifested itself in the county constituencies, was usually due, wholly or in part, to what the territorial magnates regarded as neglect of their importance, or to the failure of the Government manager to bestow on or through them Government favours which they regarded as their due in return for the electoral support which they gave to the Government.

Grange in Opposition.

The rupture, in 1733, between Lord Grange and Islay, who managed Scotland for Walpole and later, as Duke of Argyll, for Newcastle, arose out of such differences. Grange, who was a lord of session, controlled the electoral influence of the Mar family in the shires of Aberdeen and Stirling. For thirty years he had been what he himself described as Islay's "friend and humble servant"; but for some time before 1733 he had been dissatisfied with the pensions and the number and value of the offices which had gone to the Mar family, and in particular at this time he was assiduously seeking for himself a better provision than that of a lord of session, and also military appointments for two of his sons. Earlier than this, in 1732, when bent on pushing his claims at headquarters, he had been slighted by Walpole, with whom he had sought an audience in London. At this audience Grange asked Walpole what were his commands for Scotland. Walpole left Scotland exclusively to Islay, and from Walpole's point of view it could not be in better hands. Walpole had apparently no thought of setting up any rival to Islay, or of dealing with the territorial families otherwise than through his political manager for Scotland. "His answer, with a very dry look and odd air," writes Grange, "was 'I have nothing to say to you, my

[1] Cf. Warrender, *Marchmont and the Humes of Polworth*, 86.

lord; I wish you a good journey.'" This was in November, 1732. In August, 1733, after more unsuccessful efforts to obtain additional favours from Islay, Grange finally broke with the Government, resigned his place on the bench, and in 1734 went into Parliament as an opponent of Walpole and Islay.

Grange and Islay.

The story of the break between Grange and Islay is told in Grange's correspondence, a correspondence which like that of Lord Lovat, and that contained in the Caldwell and Marchmont papers, affords much insight into the political condition of Scotland in the days of Argyll, Walpole, and Newcastle, and also into the motives actuating territorial families of Scotland on the few occasions when they were in opposition to the Government. "At length I told him," writes Grange, in explaining to Erskine of Pittodry why and how he had broken with Islay and with Walpole's Government, "that I must have a conference with him, which I got not until the last Thursday of July, after the session rose at twelve o'clock, and in the session house just as all were going out....I talked to him of my own affairs, about which he was as extraordinary as could be. After many turnings and wimples and windings, it came out at length (for I followed it close) that I might despair of getting my condition changed." At this interview Grange reminded Islay that he had been his friend and humble servant for more than thirty years. Islay "wimpled and winded about and about, but all landed in this, that Kintore[1] could not have more than his place, and better I get his pension than a stranger; and he wished he could steal thrice as much for me."

Dividing an Office.

Grange had been quartered on Kintore in the manner described by Wodrow as peculiar to Scotland under Islay's management, a method of making the currency of a Scotch manager for the Government go round which was one of the causes which incensed the Marchmont family against Argyll in 1747, and led them into opposition. This device of Scotch managers for making one piece of Scotch patronage serve as rewards for two political adherents was liked by neither party to the plan. The Marchmont family was offended by Argyll, when he was managing Scotland for Newcastle, because he had quartered one of his dependents on Mr Nimmo, receiver-general of the excise in Scotland and brother-in-law of the Earl of Marchmont[2]. Grange was at issue with Argyll, who in 1733 was Earl of Islay, because he was quartered on Kintore. "I do not like," he writes, "to get money in this shape, as a louse

[1] Grange's brother's son.

[2] *Marchmont Papers*, I. 222.

feeding on my friend." "I thought," he continues in this long letter to his kinsman of Pittodry, after telling him that Islay would do nothing further for them, "I had but one game to play, which was to seek after other friends that would be glad of us, and let Islay see we are not insignificant, nor would be any more cheated, oppressed, and ungratefully and insidiously abused by him. To set up ourselves without other assistance is what neither me nor any kindred in Scotland are able to carry through. It happens well at present for our purposes that the opposition to Sir R. Walpole and Islay is stronger and more rooted than perhaps it was to any ministry since the Revolution."

Throwing up a Pension.

With "full and long proof that Islay" was not the friend of the Mar family, Grange broke with him, and threw in his lot with Queensberry, Stair, and the other Scotch peers who, before the general election of 1734, were organising an opposition in Scotland. "I would not," he told his kinsman, in describing the end of his thirty years' connection with Islay, "engage with them, and keep in my pocket Islay's pretended favour (which in reality was an affront) of a private stolen trifle of a precarious pension. I went to him, and in the civillest way in the world, gave it up to him. He said he hoped I was not turning angry. He begged me to keep it, which I absolutely refused[1]."

An Act to exclude Grange.

An incident in the parting of Grange and Islay in 1733 confirms a conviction that can hardly fail to impress itself on a student of electoral legislation enacted for Scotland between the Union and 1832. This is that it was always possible for the political manager of Scotland to obtain an Act of Parliament to remove inconveniences and difficulties out of his way. When Grange broke with Islay and served notice on him that he was joining the opposition, Islay concluded that Grange intended going into Parliament, and that he would not be disposed to resign his commission as a judge. Grange had been on the bench since 1707. Judges had been of the Scotch Parliament before the Union; and there was in 1733 no law which excluded them from the House of Commons. Grange's interviews with Islay were in August, 1733. In January, 1734, Grange wrote to Marchmont, who was acting with the opposition, that "the creatures of the court speak of getting an Act to exclude me[2] as being a lord of session[3]." The Parliament, elected in 1727, came to an end in

[1] *Letters of Lord Grange*, Spalding Club Miscellany, III. 41.

[2] From the House of Commons.

[3] *Marchmont Papers*, II. 18.

April, 1734; and between the date of Grange's letter to Marchmont and the dissolution an Act[1] was passed which excluded Scotch judges from the House of Commons. At this time nearly all English judges were excluded from the Commons. The Act of 1734 may have been, as Sir Erskine May states, "in the interest of justice as well as on grounds of constitutional policy[2]." But the break between Grange and Islay, and the opposition then making to Islay in Scotland, suggest an additional reason, one growing out of the political management of Scotland at a time when this management was more difficult than at any other period between the Union and the end of the old electoral system. All the circumstances warrant the statement of Sir George Henry Rose, editor of the *Marchmont Papers*, that the Act of 1734 was aimed expressly against Grange, on its becoming known that he meant to offer himself as a candidate at the approaching general election in 1734[3]. When the Act of 1734 was pending Grange unfolded his plans to Marchmont. "I will not," he wrote on March 9th, 1734, "be trampled by him, Lord Islay and his dogs. I can at least return to the bar[4]." Grange accordingly returned to the Outer Hall; and at the general election of 1734 he was elected to the House of Commons from Clackmannanshire[5].

**Another Recruit for the Opposition.**

At the general election of 1741 the opposition with which Grange had identified himself in 1734, headed by the Duke of Argyll, Islay's brother, received another recruit, and under circumstances very similar to those which had attended Grange's break with Islay. The new recruit was Lord Lovat, of 1745 fame, who had political interests in Inverness. In January, 1741, Lovat was busy making superiorities, and thirling to him his kinsmen, near and remote. He had made Charles Fraser of Inverallochy, who was "a cousin often removed," Baron of Erchite, in order that he might vote; and Lovat explained to him why he had thrown in his lot with Argyll, and against Islay and Walpole. "I must now tell you," wrote Lovat from Edinburgh, "that when I came here, I was not determined to dispose absolutely of myself for some time. But when I found the Duke of Argyll at the head of the greatest families, the richest families, and the most powerful families in the kingdom, openly proclaiming and owning in the

[1] 7 Geo. II, c. 17. [2] May, *Constitutional Hist. of England*, I. 375.
[3] *Marchmont Papers*, II. 18, footnote; cf. Omond, *Lord Advocates of Scotland*, I. 345.
[4] *Marchmont Papers*, II. 18, footnote. [5] *Official List*, pt. II. 83.

face of the sun, that he and they were resolved in any event to stand for and endeavour to recover the liberty of their country, which is enslaved by the tyranny and oppression of a wicked minister, I own my heart and inclinations warmed very much to that side."

Personal Interests at Issue.

As in Grange's case, however, there were other reasons for Lovat's attraction to Argyll and the Scotch peers of the opposition. "On the other hand," he continued, "when I found that the minister for the court, the Earl of Islay, said nothing to me that regarded my person or family, but that the first minister accused me of being a Jacobite, and that James Fraser of Castle Elders, that infamous liar and informer, had told to himself the strongest things of me upon that subject, which I answered very cavalierly, both as to the first minister and as to his lordship; and when I found he asked nothing of me, nor promised me any equivalent for my company, or any other particular favour, I then plainly concluded that he left me to myself to do what I thought fit. I then began to think more seriously than ever on the situation of my person and family. I found that I was to expect nothing from this administration, and on the other hand, though I always love the country interest, and especially since the Duke of Argyll declared to stand by that interest, yet I had great difficulty in my mind how to resolve myself as to my joining them[1]." Lovat finally decided on an alliance with the opposition, and as a preliminary to making "the best campaign of his life" he resolved "that the Lord Lovat shall be always master of the shire of Inverness in time to come[2]"; and to this end he at once set his lawyers to work to make the necessary superiorities in order to create votes in his interest.

Lovat makes Superiorities.

The statement quoted from the petition of the Society of Friends of the People of 1793 explains in general how superiorities were made. Lovat's letter to his kinsman, who, in 1741, was to become his political thirl, illustrates the making of superiorities; and while allowance must be made for his impetuous style of letter-writing, his letter to Fraser is of value as a contemporary picture of one of the most important preliminaries to electioneering in the counties of Scotland.

Creating a Baron.

"I wish with all my heart," wrote Lovat to Fraser, "I had made you and Strichen and Farlane barons two years ago. I

[1] Spalding Club Miscellany, II. 11, 12.
[2] Spalding Club Miscellany. II. 10.

would not be so much troubled as I am now about the election of Inverness. It was the fault of my damned lawyers that it was not done. However I am resolved that the Lord Lovat shall be always master of the shire of Inverness in time to come. I have signed a fortnight ago a disposition to Strichen, to you, and to Farlane, to be barons of the shire, and your charters will be expede in February. I make you a baron in your beloved country of Strath-errick. I give you the lands I bought from Strichen, with the pretty place of Erchite, so that you will be called Baron of Erchite. It is about five hundred pounds scots a year valued rent. I give Strichen the barony of Lentran, which is a forty-shilling land of old extent: and I give Farlane land of above five hundred pounds scots a year, in the braes of Aird and Strathglass. I am very angry at you, my dear, for as much as thinking I would allow you to be at any expense in making you a baron of part of my estate. I do not allow my lord Strichen or Farlane to be at a farthing's expense; and to imagine that I would allow you who is the true heir of my estate and honour after my children, is truly insulting me which I thought — would never think of. If the debts of my family were paid you and your family would find in a more effectual way how much I love you and resolve to support you. The expense of making the three barons comes to one hundred and twenty pounds; and when I pay forty pounds to my lord Strichen, and forty pounds for Farlane, it would be very pretty that I should suffer — to pay forty pounds for his charter, whom I truly love, as I do my eldest son. I shall cause William Fraser, my doer, to give the paper to William Fraser, Belnain's son, your doer, that is necessary for you to sign; so I salute you — Baron of Erchite, which is absolutely the prettiest place in Stratherrick, and I wish you and yours to enjoy it as long as there is a stone or tree in Stratherrick. I hope at the next election to see you chosen member of Parliament, if McLeod carry this; for I am very certain he would yield it to any of my relations; for he is a most excellent gentleman, full of honour and honesty, and one of the most affectionate relations in the world[1]."

**Bids for Support.**

The means by which Lovat thirled his relatives in view of the contest in Inverness are fully described in his letter to Charles Fraser of Inverallochy. The contest was between the Laird of McLeod, whom Lovat was supporting, and the Laird of Grant; and seemingly the only one of Lovat's connections who would not

[1] Spalding Club Miscellany, II. 10, 11.

come in with him in opposition to the Laird of Grant was one Fraser of Fairfield. A distant kinsman of Lovat's was prepared to make sacrifices to act with the Fraser clan at the election. "I must tell you," wrote Lovat to the Fraser who was to be Baron of Erchite, "an extraordinary mark of friendship and generosity. My cousin, Evan Baillie, that was doer to the Laird of Grant a long time before I knew him, has writ to Sir James Grant and has openly declared that since there is a difference between the Lord Lovat's family and the Laird of Grant's, that he was resolved to stand by the Lord Lovat and his family, against any other whatsomever, because of the obligations that he owes to the Lord Lovat, and that his mother and grandmother were Frasers of the Lord Lovat's family; so that they must excuse him and expect no services from him[1]." "When a man of another family and kindred stands firmly by me," added Lovat, with a thrust at Fraser of Fairfield who was opposing him, "what scandal and shame is it to a Fraser that pretends to be of my family to desert me." Earlier in this letter Lovat described the methods which he had used to detach Fraser of Fairfield from the Laird of Grant. Fraser of Fairfield had been promised an ensign's commission for his son if he voted with the Laird of Grant who was acting with Islay. "I told Fairfield," wrote Lovat, "that I was far from desiring his loss, or any hurt to his family; that since the Laird of Grant promised him an ensign's position for his son I would do better. Grant's promise was precarious; but that, that moment, before his cousin Mr Cumming, I would give him my bond for five hundred pounds sterling, obliging myself to get his son an ensign's position in two months, or to give him the full value of it in money to get it for his son[2]." But Fraser of Fairfield preferred the promise of the Laird of Grant, who was allied with Islay, then the distributor of all Government favours, to Lovat's bond; and Lovat, in the impetuous style that so strongly marked his letters, described him as a "poor covetous, narrow, greedy, wretch" who "has renounced his chief and kindred, and forgot all the favours I did him."

A Difficulty in Regard to Oaths.

One of the obstacles which Lovat encountered when, in 1741, he set up as the master of the shire of Inverness, was the unwillingness of several of the lairds to take the oath of abjuration in the headcourt at which the knight of the shire was chosen. He urged his kinsman, Fraser, to press one of these lairds to take the oath,

[1] Spalding Club Miscellany, II. 17.

[2] Spalding Club Miscellany, II. 14, 15.

otherwise they would lose the election. "I know," he wrote, "he has no regard for them; so he should not stand to take a cartload of them, as I would do to serve my friends; and the shire of Inverness is of such consequence to our party that no man that loves it but should do his utmost that McLeod should carry it[1]."

Patronage for County Electors.

After the reign of Queen Anne, when property qualifications became necessary for English members of the House of Commons, it was a constant care with English peers that their younger sons were provided with qualifications; for the House of Commons was then a principal gateway to civil office or to commissions in the army or the navy. Scotch peers were equally careful in providing their younger sons with a qualification for electors of knights of the shire. A man could not be returned to Parliament from a Scotch county unless he were qualified as a voter; and even if he never sought election from his county, the possession of a vote gave him a powerful lever with which to push claims for office for himself or his sons. County votes were so commonly the open sesame to office and Government favour that it was a matter of remark if a county elector had not obtained a reward for his vote[2]. In 1747, when the Earl of Marchmont was at issue with Argyll, one of the grievances which he personally laid before the Duke of Newcastle was that "not one who has supported his brother as member for Berwickshire 'had anything[3]'"; and, as the Grange correspondence shows, a man who commanded any electoral influence expected as a matter of course that the political manager for Scotland should put his sons in civil or military situations.

An Inventory of County Electors.

The general feeling that a vote should bring some return for its owner continued until the end of the old electoral system, as may be inferred from the close relations between Dundas and the landed families, and the immense amount of official patronage which he distributed during his thirty years' management of Scotland. In the confidential report which in 1788 was prepared for the use of the Whig organisers the social position and the needs and aspirations of all the two thousand six hundred and sixty-two county electors are set out. One man is described as "a writer in Ayr, would like employment and preferment." Another is put down as "an able, sharp man, wishes for preferment and business to his son at the bar." A third is possessed of "a moderate estate,

[1] Spalding Club Miscellany, II. 18.

[2] Cf. Omond, *Lord Advocates of Scotland*, II. 90.

[3] *Marchmont Papers*, I. 246.

would wish to do something for his only son now at the bar." A fourth is "a lawyer, wishes for a judge's gown." A fifth "wishes for a clerkship of session." A sixth "has a family to provide for, has a regiment; sons in the army"; while a seventh is described as "an officer on half-pay, not rich[1]."

Courting the Lawyers.

The possession of votes, or ability to control votes, was always helpful to men at the bar. The Scotch bar was largely recruited from the sons of the smaller landed proprietors and of ministers of the Presbyterian Church; and from the early days of the Union lawyers were the especial care of the political managers of Scotland. The attitude of Argyll and Islay towards the bar was noted by Wodrow as early as 1730. In that year he reports that he had been told "that the two brothers, the Duke of Argyll and the Earl of Islay, take much pains to have some interest in all the various societies of Scotland, and to have some thoroughly engaged to their side everywhere." "Everybody," continues Wodrow, "sees it in the members of Parliament; the lords of session; the settlement of ministers, and particular Presbyteries of the General Assembly. Indeed I thought the lawyers had been pretty free from party influence, save by other engagements; but he (Wodrow's informant) assures me, for these many years, a young advocate never sooner appears in the House and discovers his parts and rising genius, but he has some favours shown to him, or some gratuity or pension given him by one of the brothers, or some promise made to him. Thus universally careful are they to spread and secure influence[2]." Such interest in young lawyers could not fail to attach many of the smaller freeholders to the political managers, and to induce lawyers to possess themselves of qualifications as county electors; and the interest of Argyll and Islay in lawyers, which Wodrow noted in 1730, was quite as marked on the part of Dundas, the only political manager who had a more undisputed hold on Scotland than that possessed by Islay.

The Church in Politics.

Clergymen in Scotland never obtained votes by their offices in the Church being regarded as freeholds. Towards the end of the old electoral system a few of them were in possession of superiorities. In 1832 it was stated in the House of Commons that there were only thirty-three ministers on the rolls of freeholders[3]. But the influence of the Church in Scotland was almost invariably on the side of the Government, and the Church was not neglected by

[1] Cf. Adam, *Political State of Scotland.*

[2] Wodrow, *Analecta*, IV. 191, 192.

[3] *Mirror of Parl.*, 1833, III. 2492.

the political managers[1]. Islay's political interest in the Church continued to the end of his rule; for in 1747 Marchmont, who at this time had many grievances against Islay, now Duke of Argyll, one of them being that he carried himself as though he were king in Scotland, told Pelham that he would never find the Duke cordial to the Newcastle administration, "if even a churchwarden was named in Scotland by any but himself[2]."

Voters of the Several Counties.

Most of the counties in Scotland at the time of the report in 1788 were under the easy control of Scotch peers, or of landowners who were not of the peerage. Aberdeen with its one hundred and seventy-eight electors was in the hands of the Duke of Gordon and Lord Fife. Ayrshire which had two hundred and fifty voters, the largest number of any of the counties, was dominated by a small group of peers and baronets. Of these the Earl of Eglington commanded twenty-seven votes; Sir Adam Ferguson, twenty-four; Sir John Whiteford, sixteen; Earl Glencairn, thirteen; and the Earl of Dumfries, thirteen. "The only interest in this county," wrote the compiler of the report concerning Argyllshire, "is that of the Duke of Argyll." "Most of the freeholders," he added, "are of the Duke's family and name, and are also personally attached to him." Mr Lamont of Lamont had the only estate in Argyll "on which a great number of votes could be made," and although Mr Lamont's inclinations and sentiments were friendly to the opposition, for whose guidance the report was compiled, the author of it deemed it wise, apparently in order to prevent the raising of undue hopes, to add that Mr Lamont had also "a personal regard and friendship for the Duke of Argyll." The Earl of Fife and Duke of Gordon were in control of Banff. In this county there were one hundred and twenty-two electors. Of these fifty were thirled to the Earl of Fife and thirty-seven to the Duke of Gordon. "These two families, and indeed the Earl of Fife singly," reads the report, "overshadow all the small and independent proprietors." The leading interest in Berwickshire, as in the days when the Marchmont family was so sharply at issue with Argyll who was managing for Walpole and Newcastle, was in 1788 still in the hands of the Earl of Marchmont. In Bute, where there were only twelve electors, the family of the Earl of Bute had the command of the county. In Caithness there were only twenty-three electors, of whom eleven were under the control of the Sinclairs. Clackmannan had sixteen electors; Cromarty

[1] Cf. Hill, *Life of Lord Lovat*, 211.

[2] *Marchmont Papers*, I. 220.

eighteen; while in Dumbarton, where there were sixty-six electors, the leading interests were "Lord Elphinstone, who can make twenty-one or twenty-two voters; and the Duke of Montrose and his son, the Marquis of Graham, who can make sixteen or eighteen votes, and with the consent of Sir James Colquhoun could make as many more."

"The commanding interest in Dumfries," where there were fifty-two electors, was that of the Duke of Queensberry. As to Midlothian, the leading interest there "should be that of the Duke of Buccleugh, who can make the greatest number of votes, and is universally respected." The electors in Midlothian numbered ninety-three. In Fifeshire there were one hundred and eighty-seven electors. "There are few estates," wrote the author of the report in his notes on this county, "of such magnitude as to give much influence by creating life-rent votes. The Hon. Henry Erskine, Dean of the Faculty of Advocates, has, the compiler believes, more personal interest in this county than any other advocate. Every individual is personally known to the Dean of Faculty."

Haddington had seventy-five electors. Inverness, the scene of Lord Lovat's political activity in 1741, had one hundred and three votes. Of these thirty-one were thirled to the Duke of Gordon, fourteen to Mr McLeod, fifteen to Mr Fraser of Lovat, eleven to Lord Macdonald, and five to the Duke of Argyll. In Kincardine, where there were fifty-two votes, the leading interests were Lord Gardenstone, of the Court of Session, the Earl of Kintore, Viscount Arbuthnot, Mr Barclay of Ury, who then represented the shire in Parliament, and Sir David Carnegie of South Esk. Kinross was as much a one-man county as Argyll, and must have been even easier to manage. It is a small county; and in 1788 the greater part of it belonged "to Mr Graham in property or superiority." Kirkcudbright had one hundred and fifty votes, of which thirteen were controlled by the Earl of Galloway, a ministerial peer, and nineteen by Mr Murray of Broughton. Of Lanark, with its one hundred and twenty-four votes, the Duke of Hamilton held the controlling interest. Linlithgow had forty-three votes, of which twenty-nine were in individual hands. In Moray the Earl of Fife and the Duke of Gordon were the political magnates. Between them these peers controlled forty-eight out of the seventy-seven votes. Of the twenty votes in Nairn eight were controlled by Mr Campbell of Calder.

"Sir Thomas Dundas," wrote the author of the report in dealing with Orkney, "has by far the most considerable estate and interest in this county, and should naturally return the member." There were twenty-two electors, ten of whom were thirled to Sir Thomas Dundas. In Peebles, thirty-one votes were in the hands of individuals, four were controlled by the Countess of Hyndford, and the chief interest was that of the Duke of Queensberry. Perthshire had one hundred and sixty-one votes; and the interest was divided between the Duke of Athol and the Earl of Breadalbane, "although," continues the report, "the Marquis of Graham has also very extensive superiorities in the county, which enabled him to create many votes, and he has also great personal interest." In Renfrew seventeen votes were swayed by Sir Michael and Mr Shaw Stewart; thirteen by Mr McDowall; nine by the Earl of Glencairn; eight by the Earl of Eglington; nine by Sir John Maxwell; and nine by the Duke of Hamilton.

The predominating interest in Ross was that of Humberstone McKenzie, who controlled twenty-four out of the seventy-four votes. The two chief interests in Roxburgh were those of the ducal houses of Buccleugh and Roxburgh. The electorate numbered one hundred and five. In Selkirk, with its forty votes, "the great controlling interest was also that of the Duke of Buccleugh, who," adds the report, "is very deservedly liked and respected." Stirling, where there were seventy-six votes, was controlled by Sir Thomas Dundas, "who is beloved by men of all parties in Scotland." In Sutherland the influence of the Countess of Sutherland and Earl Gower was described as "almost insurmountable"; and it was added that the Sutherland influence "had been exerted in the creation of life-rent votes, which exceed in number those of the real freeholders." Of the thirty-four votes in this county, twenty-two were controlled by the Countess of Sutherland and Earl Gower. In Wigton the chief interest was that of the Earl of Galloway, who swayed twelve of its voters[1].

**Women as Burgh Patrons.**

Women in the English freeman and burgage boroughs had a well-recognized place in the old representative system. In the Scotch burghs they had no corresponding place. There could be no such place for women in the peculiar electoral system of the Scotch burghs as there was in the English boroughs. As in England the patronage of Scotch burghs might occasionally be in the hands of a woman. But in Scotland such instances were

[1] Adam, *Political State of Scotland*, pp. 17–350.

much less frequent than in England; and the only one that I have been able to discover between the Union and 1832 was in connection with the Kirkwall group of burghs, the constituency which Fox represented from 1784 to 1786 pending the Westminster scrutiny. Fox owed his election to the Sutherland interest; and in the closing decades of the old representative system the Kirkwall burghs, like the County of Sutherland, were controlled by the Duchess-Countess of Sutherland[1], who took an active part in politics, and was described by one of her countrymen as "one of the most remarkable persons of her time[2]."

Women in County Representation.

The position of women under the county electoral system of Scotland more resembled that of women in English burgage boroughs than in English counties. In the English counties women of property could make freehold qualifications, and they had influence with tenants. The position of women of property in Scotland was more important; because the opportunities for creating county qualifications were much fewer than in England, and the electoral value of each vote was much greater. In some of the English burgage boroughs a woman who had a burgage could transfer the qualification inherent in it on the eve of an election. An unmarried woman or widow in Scotland, who held her lands direct from the Crown, could not so cheaply and so quickly transfer the vote inherent in her lands. But it was in her power to create superiorities, and to exercise a control over the votes so made. In addition to women exercising political influence through votes already made, several were named in the report of 1788 who had it in their power to make votes. In the notes on Dumbarton mention is made of Miss Buchanan of Drumakiln, who was described as possessed of "a pretty tolerable estate, and can make two votes[3]." In the Midlothian notes it was stated that "Miss Gibson, the heiress of Sir Alexander Gibson of Pentland, has a good estate on which votes might be made[4]." In Renfrew there were two women who could make superiorities—Miss Pollock of Pollock, "an old unmarried lady possessed of a very independent estate," and in a position to make six or seven votes[5]; and

[1] Oldfield, VI. 168.

[2] *Stafford House Papers*, 250; cf. Omond, *Lord Advocates of Scotland*, II. 155, 156.

[3] Adam, *Political State of Scotland*, 91.

[4] Adam, *Political State of Scotland*, 108.

[5] Adam, *Political State of Scotland*, 280.

Mrs Napier of Milliken, set down as being able to make six votes[1]. Neither in the Scotch counties nor in the burghs, however, had women as much power as they enjoyed under the old representative system in England, even when the disparity in the number of Scotch and English members is taken into account.

A Candidate's Procedure.

From the hold which the Scotch peers and larger landowners had on the constituencies, it followed that an election in a Scotch shire was an affair in which the unenfranchised had about as much concern as in an English borough in which the election was in the hands of the corporation. The mode of procedure of a Parliamentary candidate for a Scotch county was not unlike that of a candidate at an English borough who went with a letter of introduction from the borough patron to the corporation. The first step of a Scotch candidate was to secure the support of the heads of the territorial families which controlled the county. With that support assured the election was as good as carried. But until the heads of the territorial families knew that the candidate had the support of the Government manager for Scotland, and until the electors who were thirled to these families knew beyond all doubt that a candidate had the endorsement of their family chiefs, it was useless to begin a canvass.

Andrew Mitchell's Canvass.

In 1747, when Andrew Mitchell was contesting Aberdeenshire, he endeavoured to push his interest among the voters of the shire living in Edinburgh, before they had been informed that he had the support of the Duke of Argyll, who was then managing Scotland for the Government. "I have applied here," Mitchell wrote from Edinburgh to the Duke of Newcastle, "to some of the Duke of Argyll's friends that have votes in that county. The answer they generally gave was that his grace would soon be in Scotland[2]." Later in Mitchell's canvass, the Duke of Argyll's supporters in Aberdeenshire met at Aberdeen and adopted a resolution characteristically marked by Scotch caution. It was to support Mitchell "provided the Duke of Argyll did not signify to them that he had altered his first resolution[3]." There was a second candidate at this Aberdeenshire election in 1747. When he found that Mitchell had the support of Argyll he retired, and by his method of retiring he paid a compliment to the great Scotch political manager. He would retire only on condition that Mitchell

[1] Adam, *Political State of Scotland*, 291.
[2] *Memoirs of Sir Andrew Mitchell*, I. 54.
[3] *Memoirs of Sir Andrew Mitchell*, I. 56.

acknowledged that he owed his election to Argyll. "As the Duke had honoured me with his countenance," wrote Mitchell to Newcastle, "I could with truth declare that I owed the ease and unanimity of my election to his grace[1]."

Lord Cawdor's Power.

A much later incident, illustrating the power which one peer could exercise over the representation of a county, occurred in connection with the election of Sir James Mackintosh for Nairn in 1813. The story is told in a letter from Scarlett, published in the Life of Mackintosh. "My excellent and much valued friend, the late Lord Cawdor," wrote Scarlett, referring to the time when the general election of 1812 was pending, "made some communication to me on the subject of the representation of the county of Nairn, in which his family and connections had an influence that would be important at the next general election. I ventured to suggest to him Sir James Mackintosh, as one who would do most honour to his lordship's interest, who could not fail of being acceptable to that county as the neighbourhood of his seat, birth, and family. Lord Cawdor acquiesced without hesitation in all that I had said. He had, however, but a slight personal knowledge of Sir James, and had heard some doubts cast upon his political principles. He was not desirous that the county of Nairn should be represented by any person that would accept office under the existing administration, and at all events would not himself be the instrument of recommending such a candidate[2]." Scarlett was able to satisfy Lord Cawdor of Mackintosh's loyalty to the Whigs; and "Sir James Mackintosh shortly afterwards proceeded to Cawdor Castle, where he passed a portion of the ensuing summer in cultivating the interest which he represented in the next Parliament[3]." Mackintosh had arrived in England from Bombay in May, 1812. The general election took place in October. When Lord Cawdor agreed to put him forward as his candidate, Mackintosh was not an elector in the County of Nairn. A qualification was at once obtained for him, but it took a year and a day to mature; and it was not until June, 1813, that Mackintosh was returned to Parliament. Colonel Rose, of the ancient house of Kilravock, had in the meantime obligingly sat as locum tenens for Mackintosh; and Rose applied for the Chiltern

[1] *Memoirs of Sir Andrew Mitchell*, I. 57.
[2] Mackintosh, *Life of Sir James Mackintosh*, II. 285.
[3] Mackintosh, *Life of Sir James Mackintosh*, II. 287.

Hundreds as soon as Lord Cawdor's nominee's qualification had matured[1].

Independent Voters.

From about this time until 1832 independent voters, those not thirled to territorial families, became of more importance in the county elections: and during these twenty years party lines, now based on political principles, were better marked in Scotland than at any period since the Union[2].

Social Amenities.

Under the Scotch system of county representation members and constituents were necessarily brought into much closer political and social contact than were electors and elected in the counties of England. It was customary for a candidate to visit all the electors during his canvass, and to pay visits to return thanks after he had been elected[3]. These calls after election were made in a leisurely fashion; for after his election for Aberdeenshire in 1747, Mitchell wrote to one of his correspondents, "I shall pass a few weeks here to return thanks to the electors"; and he was so engaged from the 14th of August to 21st of September[4]. In addition to the first round of calls on electors, seeking their support, it became, as the eighteenth century advanced, a custom with candidates, apparently as a preliminary to these calls, to issue printed addresses to the electors[5]. Judging, however, from contemporary letters and diaries, and from the general political condition of Scotland in the eighteenth century, the headcourts at which members of the House of Commons were chosen were rather convivial gatherings than occasions for the discussion of political principles and political policies.

Convivial Headcourts.

There is evidence that the headcourts had this convivial character at the first general election after the Union; and the probability is that it had not been lacking in the days of the Scotch Parliament. Among the papers of the family of Rose, a family long politically connected with the shire of Ross, there is a curious protest from the ministers of Ross and Sutherland assembled in synod against the riotous character of a headcourt at Taine, held in 1708. The protest was addressed to the sheriff, the Laird of Kilravock; and the principal, though not the only ground of

[1] Mackintosh, *Life of Sir James Mackintosh*, II. 263; *Official List*, pt. II. 269.

[2] Cf. *Westminster Review*, No. XXVII. 140; Omond, *Lord Advocates of Scotland*, II. 162.

[3] Cf. *Memoirs of Sir James Campbell of Arkinglas*, I. 337.

[4] *Memoirs of Sir Andrew Mitchell*, I. 64.

[5] Cf. *Caldwell Papers*, I. pt. II. 284.

complaint was, that the laird had called the headcourt for a Saturday, and by so doing had caused a profanation of the Sabbath. "The ministers of Ross and Sutherland," reads the protest, "were under no small consternation when they understood that the meeting of barons called by your honour upon the 26th of June last[1], for the election of one of their numbers to represent Ross-shire in Parliament, continued undissolved till about two o'clock of the Lord's day following." The ministers objected that "the calling of the barons upon the last day of the week without any strait or necessity can never be justified, seeing it could not be rationally supposed but some would be thereby tempted to profane the Sabbath, though the dissolution of the meeting had been on Saturday evening." They complained that the headcourt was "protracted till the Sabbath began more than to dawn": and that it "was also attended with some other gross disorders; some having drunk to excess in taverns; others travelling and crossing the ferries." It was another grievance of the Synod of Taine that some of the barons "sung and shouted and danced in their progress to the ferry, without any check or restraint, as if they meant to spit in the face of all sacred and civil laws, while yet the authority next at hand countenanced them therein[2]." This authority was the sheriff, whose son had been elected to Parliament.

An Election Scandal.

As the century wore on the headcourts lost none of their convivial character. Grange, when he was a lord of session, often carried news and gossip to Wodrow, who industriously recorded it in his *Analecta*. "My Lord Grange tells me," wrote Wodrow, after the general election of 1727, "most melancholy accounts of Principal Chambers, of King's College, at the last election of member of Parliament for the shire of Aberdeen. He had a commission and instruction from the College to vote, if I remember, against Sir John Grant: and yet, contrary to them, acted and voted for him. But which was worse, the side he was on sat up and drunk hard till four or five o'clock in the morning, and he was perfectly fuddled and was to be carried to his horse[3]."

Cost of the Conviviality.

It naturally fell to the lot of the Parliamentary candidates to pay the bills for the entertainments thus described in the protest of the Synod of Taine and in the *Analecta*. In 1734, when Hugh Rose, the central figure of the scene at Taine in 1708, was again

[1] When Hugh Rose the younger, of Kilravock, was elected. *Official List*, pt. II. 17.

[2] *The Family of Rose of Kilravock*, 396. [3] Wodrow, *Analecta*, III. 484.

chosen for Ross, he had to pay bills to the amount of £41. 15*s.* 10*d.*, incurred at the taverns on the day of election. The principal items in the statement published in the Rose letters and papers, under the heading "Bill of Entertainment for Kilravock's Election at Taine," were twenty-four dozens of wine, £21. 12*s.*; sixteen gallons of threepenny ale, £1. 12*s.*; and entertainment, £15[1]. As there were between seventy and eighty electors in Ross it may be concluded that Kilravock's bill at the election of 1734 represented something like the average outlay on entertainment of a successful candidate at a Scotch county election. As compared with the outlay of county candidates and their supporters in England on similar occasions, Kilravock's bill was exceedingly small; and moreover it may be assumed that it represented practically all the candidate's expenses on the election day. When in more than half the counties of Scotland it was practicable to assemble all the electors of the county in a good-sized tavern parlour, official expenses at a headcourt must have been small. Whatever their amount, they were paid out of public money, and candidates for counties in Scotland had never to bear the heavy official charges which were thrown on candidates for the counties in England.

County Members Local Men.

Between the Union and 1832 Englishmen were, at rare intervals and under special circumstances, elected from Scotch burghs to the House of Commons. But not a single Englishman, so far as can be ascertained from the official returns, was girt with the sword of a knight of the shire in Scotland. Occasionally a Scotchman, permanently settled in London, like Robert Adam, the architect, who represented Ross in the Parliament of 1768–74[2], was chosen for a Scotch county. These instances, however, were few, and the men so elected had a real or fictitious landed connection with the counties for which they were returned. In most cases the members were lairds in the counties which they served. The property qualification of a Scotch member, more local in its character than any of the qualifications imposed on English or Irish members, must always have been a bar to candidates from England. But had not this part of the law of 1681 survived the Union, had there been no property qualification for Scotch county members, economic conditions and the social system of Scotland would have been most unfavourable to Parliamentary candidates from south of the Tweed.

[1] *The Family of Rose of Kilravock*, 410; cf. *Caldwell Papers*, I. pt. II. 25.
[2] *Official List*, pt. II. 148.

Dominance of the Great Families.

In the lists of members from Scotch counties prior to 1832 there is not to be found a single English name. The names of territorial families recur with even greater frequency than those of the territorial families of England in the lists from English counties and boroughs: and as has been pointed out by an author who has made the pedigrees and biographies of the members from Scotland his special study, these lists of Scotch members mark the traditions of hereditary feuds and the struggles of rival clans and families for local political dominance, which did not come to an end with the first reform of Parliamentary representation in Scotland. "The houses of Elliot, Grant, Hope, and Anstruther," wrote in 1880 the compiler of *Members of Parliament for Scotland*, "can actually boast an unbroken descent of seven generations in Parliament. Campbell of Calder, Dundas of Arniston, and Erskine show six generations; while Dundas and Foulis each exhibit six[1]." The old system of county and burgh representation admirably lent itself to this political dominance of the landed families, after the Union even more than before; and the social conditions of Scotland growing out of the clan system saved these families from the assaults frequently made on the political position of English landed families by men who had become rich in commerce or manufacturing, and who were bent on acquiring political influence to advance the social importance of their families.

English Candidates for Scotland.

From 1832 to 1884 the thirty knights of the shire from Scotland were elected by the owners of landed property of the value of ten pounds a year, and by fifty-pound leaseholders. After 1832 English names occur with more frequency in the official lists of members returned from Scotch burghs than in the list of burgh members from 1707 to 1832. Occasionally, but only occasionally, an English name can be discovered in the later lists of knights of the shire from Scotland; and it may be said generally that county representation in Scotland, so far as the *personnel* of the members is concerned, retained in these fifty years the characteristic which marked it in the period between the Union and the first Reform Act, when none but Scotchmen represented the counties in Parliament. Between 1832 and 1885 the cities of Edinburgh and Glasgow were sometimes represented by Englishmen. Macaulay sat for Edinburgh from 1837 to 1856[2]; and Lord William Bentinck

[1] Foster, *Members of Parliament for Scotland*, vii., viii.

[2] *Official List*, pt. II. 374, 392, 426.

represented Glasgow from 1836 to 1839[1]. But not until after the extension of the franchise to the working classes in the counties by the Reform Act of 1884 were Englishmen frequently candidates for election from the shires of Scotland.

Popular Interest in Politics.

During the greater part of the period between the Union and 1832 Scotch county elections seem to have occasioned little more popular interest or excitement than was aroused in England by the meetings of the magistrates in quarter sessions, or the coming to the county town of the judges of assize. Except for the Porteous riots in 1736, until nearly the end of the eighteenth century there were no popular political movements in Scotland. The first political meeting of non-electors in Scotland was in 1792, "when a number of persons, about one hundred and seventy it was said, styling themselves a 'general convention of delegates from the Society of Friends of the People throughout Scotland,' assembled in Edinburgh on the 11th of December, for the purpose of concerting measures for obtaining a redress of grievances, and for restoring freedom of election and an equal representation of the people in Parliament. The Government, alarmed at the first symptoms of the platform being adopted for political purposes by a totally new class of people, determined on, if possible, checking a continuance of the practice; and for participating in this convention, and in the meetings at Kirkintilloch and Miltoun, one Thomas Muir, a young advocate of high talents and attainments, was arrested and committed to prison[2]." Other prosecutions followed the Edinburgh convention of 1792; and from this time must be dated popular interest in Scotland in the movement for Parliamentary reform. Henceforward elections in Scotland aroused more popular interest, and the movement for municipal and Parliamentary reform spread among the middle classes[3]. Like the representative system, or rather the absence of system which time and the decisions of the House of Commons had produced in so many English boroughs, the system of county and burgh representation in Scotland could not for many years have survived the era of the newspaper press. Popular interest in the movement for reform was heightened with the increasing developement of the newspaper, and when at last the Parliament of 1831 sought to deal with Parliamentary reform, popular excite-

[1] *Official List*, pt. II. 375.

[2] Jephson, *Platform*, I. 201.

[3] Cf. Omond, *Lord Advocates of Scotland*, II. 160, 300.

ment ran as high in Scotland as in England, especially in neighbourhoods where there were large industrial populations.

A County Election in 1831.

It is scarcely possible to close this history of county representation in Scotland better than by quoting Sir Walter Scott's description of the last headcourt which he attended, that at Jedburgh, convened to elect a member from Roxburgh to the Parliament which was to pass the Reform Bill, and end the system which Sir Walter eulogised so fondly when, five years earlier, he had carried Prince Davidoff to Selkirk, "to see our quiet way of managing the choice of a national representative[1]." "Went to Jedburgh to the election," is the entry in the *Journals* under the date of May 18th, 1831, "greatly against the wishes of my daughters. The mob was exceedingly vociferous and brutish, as they usually are nowadays. But the sheriff had two troops of dragoons at Ancrum Bridge, and all went off quietly. The populace gathered in formidable numbers—a thousand from Hawick alone. They were sad blackguards, and the day passed with much clamour and no mischief. Henry Scott was re-elected, for the last time I suppose. *Troja fuit.* I left the burgh in the midst of abuse, and the gentle hint of 'burke Sir Walter.' Much obliged to the brave lads of Jeddart." In spite of the tumult and the clamour and the gentle hint to "burke Sir Walter," Scott had one great cause for satisfaction in the last of the elections for Roxburgh under the old system in which—in the days when he was sheriff-clerk, and later when Laird of Abbotsford—he had so long had his part. "Upwards of forty freeholders," he adds in his *Journals*, "voted for Henry Scott, and only fourteen for the puppy that opposed him."

[1] Sir Walter Scott, *Journals*, July 1st, 1826.

# PART VI

## PARLIAMENTARY REPRESENTATION IN IRELAND.


## IRELAND.

### County and Borough Representation.

**Boroughs underlined sent representatives to the United Parliament after 1800.**

# CHAPTER XL.

## INTRODUCTORY.

Comparison with Scotch Parliaments.

THE Parliament of Ireland, which came to an end at the Union in 1800, had points of similarity with that of Scotland, and also with that at Westminster, into which both were merged. The Irish Parliament resembled that of Scotland chiefly in that, for nearly three centuries of its existence, from 1495 to 1782, by the operation of Poynings' law it was as much under the control of the Crown as was the Parliament of Scotland, until the Revolution, through the Committee of Articles. Two years after the repeal of Poynings' law the Duke of Rutland, then Lord-Lieutenant of Ireland, in writing to Pitt from Dublin, declared that the Parliamentary system of Ireland "does not bear the smallest resemblance to representation[1]." Rutland's description was warranted by the fact; for after Poynings' law had disappeared the Irish Parliament continued under the control of the Crown acting through the Lord-Lieutenant. This control was exercised by means of what, in a debate on a place-bill in the Irish House of Commons in 1793, was euphemistically described as the "regal influence"—an influence which was dominant until the Irish Parliament ceased to exist. Only in this one vital particular, its control by the Crown, did the Parliament of Ireland, as distinct from the representative system, resemble that of Scotland.

With Parliament at Westminster.

To the Parliament at Westminster that of Ireland was much more closely akin. Like the Parliament at Westminster it consisted of an upper and lower chamber, a House of Lords and a House of Commons; and the representative system by which the Irish House of Commons was elected was almost a replica of the electoral system of England before the Reform Act of 1832.

[1] *Pitt and Rutland Correspondence*, 16.

Representation in 1692.

The formative period of the Irish representative system extended from the reign of Henry VIII to the Revolution of 1688. By 1692 the number of members of the House of Commons had become fixed at three hundred, and all the constituencies were electing members. The long irregular intervals between the assembling of Parliament now also came to an end. During the century and a half extending from the reign of Henry VIII until the time when the Irish House of Commons became organically complete, the forty-shilling freehold had become the basis of county representation[1]; while in borough representation there had been developed the freeman franchise: the franchise exercised solely by municipal corporations: the potwalloper franchise, with many of the peculiar and quaint characteristics of the potwalloper franchise in England: and the freehold franchise in manor boroughs, which, although more recent in its origin, bore some resemblance to the burgage franchise in English boroughs.

Characteristics common to Ireland and England.

As in England, each county in Ireland was represented by two knights of the shire, chosen in the county court. But unlike England, Ireland had no boroughs returning only one member each. Two members were uniformly returned by the one hundred and seventeen boroughs which, from the Revolution to the Union, sent members to the House of Commons. The Irish House of Commons also, like that at Westminster, had its university members; for from the reign of James I, to whom Oxford and Cambridge owed their Parliamentary enfranchisement, Trinity College, Dublin, was represented by two members. In the closing years of this formative period, also, seats in the House of Commons had become in demand; although not as yet, nor until the eighteenth century began, to quite the same degree as in England. Non-resident members for Irish boroughs had become general. The payment of wages to members had ceased; and by 1692 the landed aristocracy of Ireland had the boroughs almost as completely under their control as in 1800, when £1,260,000 of public money was divided among the borough owners at the Union as compensation for the disfranchisement of eighty-four boroughs.

Irish Rotten Boroughs.

Much the same influences were at work on the representative system of Ireland from the beginning of the seventeenth century to the Union, as were working in England from the earlier period at which seats in the House of Commons became objects

[1] *Statutes of Ireland*: 33 Henry VIII, c. 1. (Unless otherwise stated, laws quoted in this section are Statutes of Ireland.)

of ambition or interest. These influences were working to the same end as in England, and in an easier field. As a result Ireland, for generations before the Union, had Parliamentary boroughs, like Bannow and Clonmines, in the county of Wexford, and Harristown in the county of Kildare, which were counterparts of Old Sarum and Gatton in the unreformed Parliamentary system of England. The site of Bannow was a mountain of sea-sand, without a single inhabited house[1]. At Clonmines there was one solitary house[2]; at Harristown there was none[3]. But until the Union each of these Irish Gattons and Old Sarums was represented in the House of Commons by two members; and in the settlement between the borough owners and the Government at the Union, when the Government bought out and secured for ever "the fee simple of Irish corruption[4]," the patrons of these boroughs received fifteen thousand pounds in respect of each as compensation for its Parliamentary extinction.

The two Houses of Commons.

Turning from the Irish representative system to the House of Commons, the resemblance to the English House of Commons was even closer. Between the framework of the English and Irish representative systems there were some differences in detail, and also differences in the actual working of the two systems. These differences in working were not all to the disadvantage of the Irish system; for when the Irish Parliament came to an end Ireland had had for some years a system of electoral registration which was lacking in England until 1832; and since 1727[5] the Irish Parliament had protected candidates for the House of Commons from part of the official fees and charges which by usage had long been thrown on candidates for the English House of Commons. But between the organisation and usages of the Irish House of Commons, especially after procedure had been shortened and simplified by the repeal of Poynings' law, and the organisation and usages at Westminster, it would be difficult for an expert in Parliamentary procedure to detect any material differences.

Imitating the English Parliament.

As early as 1495 the House of Lords in Ireland, in even so small a detail as the robes to be worn by peers in Parliament, was taking pattern from the House of Lords at Westminster[6]. The

[1] *Irish Municipal Commission*, 1835, *1st Rep.*, App., pt. I. 448.
[2] *Irish Municipal Commission*, 1835, *1st Rep.*, App., pt. I. 492.
[3] Ingram, *Hist. of the Union*, 33.
[4] *Castlereagh Correspondence*, III. 333.
[5] 1 Geo. II, c. 9.
[6] 10 Henry VII, c. 16.

Representation in 1692.

House of Commons of Ireland began imitating the Westminster from odel at least as early as 1568, when Hooker, the antiquary and the namberlain of Exeter, who had been of the English House, and fixewas then of the Irish Commons, reported to the Irish House in r full on the procedure at Westminster[1]. At this time, according to Hooker's own account, the Irish House of Commons was "more like to a bear-baiting of loose persons than an assembly of grave and wise men in Parliament." To what extent the Irish House of Commons then adopted the procedure of Westminster can be only a matter of conjecture. But concerning the Parliament of 1585-86, the last Parliament before the Journals begin, there is evidence that at least two or three rules, modelled after those of the English House of Commons, had been adopted, and that subsequent to Hooker's explanation of English procedure efforts were made to free the Irish House of Commons from the disorder which he described and lamented[2].

Chadopting tics English to Usages. an

The Journals of the Irish House of Commons begin in 1613. They show the existence at that time of a number of the usages of Westminster; and from 1613 until the eve of the Union it is possible to trace the Irish House gradually assimilating its usages and procedure to those of the English House of Commons. As at Westminster forty members constituted a quorum[3]. Both Houses had the same officers, with similar functions. Procedure was the same, except that, until 1782, in Dublin it was necessarily made far more involved and cumbersome by the working of Poynings' law. The ceremonial usages and the language towards the Crown were the same; and the Irish House of Commons held itself towards the Irish House of Lords much as the English House of Commons behaved towards the House of Lords at Westminster. Parliamentary phraseology in Dublin was closely akin to that of Westminster; and, in a word, the Irish House of Commons, in the last half-century of its existence, was as much a replica of the House of Commons at Westminster as is the House of Commons at Ottawa to-day.

Developement of the Irish Parliament.

The history of the Irish Parliament has been divided into five stages. In the first were councils which were not as yet Parliaments. In the second these councils had become Parliaments, but had no representatives of the commons. In the third stage Parliaments had representatives of the commons, but no repre-

[1] Cf. Mountmorres, *Ancient Parliaments of Ireland*, I. 87.

[2] Cf. Bagwell, *Ireland under the Tudors*, III. 142. [3] *Parl. Reg.*, X. 53.

sentatives of the native Irish. In the fourth the native Irish were represented but the Parliaments were still restrained by Poynings' law, and overawed by the fear of another legislature claiming pre-eminence; while in the fifth and shortest stage Parliaments were constitutionally free and independent, and subject to no external authority[1]. The Irish Parliament was in the fourth of these stages of developement in 1692, when the representative system became organically complete: when the constituencies stood as they did at the Union: and when an end had been made to the long and irregular intermissions of Parliaments, which marked the representative history of Ireland from the reign of Elizabeth to the Revolution. In this period from 1558 to 1669 there was one intermission of twenty-seven years, from 1586 to 1613; another of nineteen years, from 1615 to 1634; a third of thirteen years, from 1648 to 1661; and a fourth of twenty-six years—the last long intermission—from 1666 to 1692[2].

Wogan's Parliaments.

The third of these five stages, that from which the representative system of Ireland dates, began in 1295, when the principle of elective representation of the commons was introduced by Sir John Wogan. In 1295 there were summoned to Parliament not only lords spiritual and temporal, but "two of the better and more discreet knights" of each county and liberty as the counties palatine were then called. The liberties or counties palatine were under the rule of great noblemen, who nominated the sheriffs or seneschals, and administered justice within their confines, much like absolute princes[3]. The counties at this time directed to choose knights were Dublin, Louth, Kildare, Waterford, Tipperary, Cork, Limerick, Kerry, and Roscommon. Meath, Wexford, Kilkenny, and Ulster were the liberties. With the assembly, which was the response to the writs issued in 1295 to these nine counties and four liberties, the councils which dated from the reign of John expanded into Parliaments; and the assemblies which met after 1295 were even better entitled to the name of Parliaments, as the classes of society represented were increased[4]. To one held in 1311, also under Wogan, not only knights for counties but citizens and burgesses for cities and boroughs were summoned; and in 1360 a further addition to the representation was made by the enfranchisement

[1] Ball, *Legislative Systems of Ireland*, 124.
[2] Cf. *Parl. Reg.*, XIV. 84; *Official List*, pt. II. 604.
[3] Cf. Ball, *Legislative Systems of Ireland*, 5.
[4] Ball, *Legislative Systems of Ireland*, 3, 5.

of portions of the counties of Meath, Kilkenny, Wexford, and Tipperary, which were under ecclesiastical jurisdiction, and were known as the Crosses[1].

The Fourth Stage of Developement.

By 1360 the representative system of Ireland had, in its general lines, been assimilated to that of England, and Wogan's system of representation had become to some degree permanent. Thenceforward, knights, citizens and burgesses were of the Parliament, although the number of constituencies returning them varied, as writs were not always sent to the same counties[2]. As yet, and for about one hundred and eighty years to come, the Irish Parliament remained in the third stage of its developement; for, according to Sir John Davies, the native Irish were excluded from the representation until 1542, when, by the Act of Henry VIII[3], which became the basis of county representation in Ireland, and also had for its object the establishment of a uniform inhabitant householder franchise in Irish cities and towns, the native Irish were enfranchised. This Act directed that every elector of knights "must have lands and tenements of estate, freehold, within the said counties at least to the yearly value of forty shillings over and above all charges"; and it further directed that "from henceforth every knight, citizen and burgess for every Parliament hereafter within this realm of Ireland to be held shall be resident and dwelling within the counties, cities, and towns, chosen and elected by the greater number of the inhabitants of the said counties, cities, and towns, being present at the said election, by virtue of the King's writ for that intent addressed."

The Act of 1542.

In the history of county representation in Ireland this Act of 1542 stands out as prominently as the Act of 8 Henry VI in the history of English county representation; for from 1542 to the Union it formed the basis of Irish county representation, and it so continued until the disfranchisement of the forty-shilling freeholders by the Act of the Imperial Parliament of 1829.

Its Effect on the Representative System.

The provision in the Act of 1542 establishing a uniform franchise in Irish cities and boroughs can have been of only temporary operation; for from the time when boroughs were widely represented to the reign of James I, there was no uniformity in the electoral system in the cities and towns of Ireland: and before the Restoration there was much the same diversity in borough franchises as existed at the Union. But while this Act of 1542

[1] Cf. Ball, *Legislative Systems of Ireland*, 6.

[2] Cf. Ball, *Legislative Systems of Ireland*, 7.

[3] 33 Henry VIII, c. 1.

did not permanently establish a uniform franchise in the cities and boroughs, it is of significance as establishing the county franchise on the forty-shilling freehold basis; and further, because its enactment has been accepted by authorities on Irish representative history as marking the end of the period during which only the English in Ireland were represented in the Irish House of Commons[1]. "Before that time," said Sir John Davies, in his speech reviewing the history of the Irish Parliament, when he was presented to the Lord-Deputy as the Speaker of the House of Commons on May 21st, 1613[2], "we do not find any to have had place in Parliament but the English of blood or English of birth only." For this exclusion Davies assigned as reasons that "the countries of the mere Irish lay out of the limits of counties, and so they could send no knights; also that in their counties there were no cities or boroughs whence to send burgesses": and that "the State did not hold the Irish fit to be trusted with the counsel of the realm[3]."

Clergy of the House.

In the stage of the Irish Parliament when the native Irish were excluded there were of the Parliament proctors representing the clergy of the several dioceses and elected by them. Their exact place in Parliament before 1537 is a matter of conjecture; but in 1537 an Act was passed[4] which denied these proctors the right of "voice or suffrage," and ordained that they should attend only as "counsellors and assistants." A representation so circumscribed could have in it little of permanence; and from the beginning of the Journals, at any rate from 1613—the date from which the Journals have been preserved and printed—there is no trace of proctors representing the clergy in the House of Commons.

Number of Members in 1585.

At the time of Wogan's Parliament of 1295 there were only twelve counties in Ireland. Henry VIII added a county by dividing Westmeath from Meath. In the reign of Philip and Mary two other counties were added. In Elizabeth's reign sixteen new counties were created; and in the reign of James I the number was brought up to thirty-two[5], at which figure it stood at the Union. With these additions to the counties there were corresponding additions to the number of knights of the shires; and in the last Parliament of Elizabeth's reign, that of 1585,

[1] Cf. Ball, *Legislative Systems of Ireland*, 8.

[2] Cf. *Dict. Nat. Biog.*, XIV. 143.

[3] Leland, *Hist. of Ireland*, II. 498.

[4] 28 Henry VIII, c. 12.

[5] Ball, *Legislative Systems of Ireland*, 10, 11.

which was followed by an intermission in Parliaments lasting until 1613, there were one hundred and twenty-seven members. Of these fifty-five were knights of the shire. Four of the knights were from Tipperary, two from the county and two from the Cross or ecclesiastical jurisdiction; three from the county of Cork; and the remaining forty-eight from the twenty-four other counties which at this time returned knights. Only four cities and eight boroughs were represented in this Parliament of Elizabeth, each city and borough sending two members[1].

James I's Irish Policy.

In the interval between the last Irish Parliament of the sixteenth century and that of 1613 James I had succeeded to the throne. "His object," writes Ball, in treating of James's policy towards Ireland, "was to establish his own authority over its people, whether native or Anglo-Saxon, and in return to treat all as subjects. He therefore wished that in the House of Commons of the first Parliament that he summoned the Irish districts should be represented, and that members of the Irish race should be returned. At the same time, lest they should overpower the English interest, he increased the representation by a number of boroughs situated in Ulster, of which he had just before completed the plantation, and which were in fact towns or villages where Scotch and English colonists had built a few houses and begun to establish themselves[2]."

His Creation of Boroughs.

The Earl of Chichester acted for James I in the creation of boroughs. The King's motive is explained in Chichester's letter of August 14th, 1612, to Sir John Davies, then Attorney-General for Ireland, and afterwards Speaker of the House of Commons. "In making of the borough towns," wrote Chichester, "I find more and more difficulties and uncertainties. Some return that are but tenants at will and pleasure to certain gentlemen who have the fee farm, or by lease for a few years, so as they are doubtful to name themselves for burgesses without the landlord's consent, and the landlord is of the Church of Rome and will return none but recusants, of which kind of men we have no need and will have less use. Some other towns have few others to return than recusants, and others none but soldiers. So as my advice in that point is that you bring direction and authority to make such towns only as we think fit and behoveful for the service, and to omit such as are named, if they be like to be against us; and to enable others by

[1] Cf. Ball, *Legislative Systems of Ireland*, 11.
[2] Ball, *Legislative Systems of Ireland*, 14.

charter, if we find them answerable to our expectation, albeit they are not in the list sent thither by the Lord Carewe, nor returned as allowed there[1]." Davies, the Attorney-General, acted on Chichester's advice; and in November, 1612, six Roman Catholic peers—Gormanstown, Slane, Kileen, Trimblestown, Dunsany, and Louth—protested to the King. They complained that many of these new towns and corporations consisted of "some few poor and beggarly cottages"; and petitioned James that he would "give direction that there be no more erected, till time or traffic and commerce do make places fit to be incorporated." This protest was disregarded; and the number of new boroughs was increased to forty, of which several were not incorporated until writs for the election of Parliament were issued[2].

Their Character.

Some of these borough charters of 1612 were granted ostensibly with a view to the settlement of towns. They all contemplated the creation of corporations charged with the ordinary duties of municipal government. But the commissioners who investigated the Irish municipalities between 1833 and 1835 found that in some instances these corporations never had any existence; while in many other instances they had no existence except as organisations for the purpose of returning members to the House of Commons. Twenty-four of the corporations chartered by the Stuarts ceased to exist after the Union when their Parliamentary privileges were extinguished; and in 1833 eleven more were in actual decay or in a condition of doubtful existence[3].

First Representative Parliament.

To the Parliament of 1613 there were chosen two hundred and thirty-two members, of whom two hundred and twenty-six attended. Of these, one hundred and twenty-five were Protestants and zealous for the English interest; while one hundred and one were of the Roman Catholic faith[4]. From this Parliament of 1613 is dated the first general representation of Ireland in the House of Commons.

Number of Irish Boroughs.

Before James began his creation of boroughs there were in Ireland forty-four towns in which the municipal corporations are supposed to have existed by prescription, or in which there are traces of municipal bodies prior to the reign of James I. During his reign James I enfranchised forty-six boroughs, in addition to

[1] Sir John Davies, *Hist. Tracts*, xviii.
[2] Cf. Leland, *Hist. of Ireland*, II. 444–6.
[3] Cf. *Irish Municipal Commission, 1st Rep.*, 57.
[4] Cf. Leland, *Hist. of Ireland*, II. 447.

bestowing on Trinity College, Dublin, the privilege of returning members to the House of Commons. Charles I created only one borough. By Charles II fifteen boroughs were created[1]; and at the end of his reign there were in all one hundred and seventeen cities or corporate boroughs in Ireland. In England, not every corporate borough sent members to the unreformed House of Commons; but in Ireland, from the reign of Charles II to the Union, every city and corporate borough could elect two members. From 1692 they all elected; and the two hundred and thirty-four representatives from borough constituencies, together with sixty-four knights of the shire and two burgesses from Trinity College, brought up the number in the House of Commons of 1692 to three hundred. At that number it remained without any change or interference with the borough constituencies until the abolition of the Irish Parliament.

Historical Sources.

Historical material covering the formative period of the Irish Parliament is not abundant. There are few memoirs or volumes of letters such as those which throw so much light on the developement of Parliamentary representation in England. But in the Journals of the Irish House of Commons and in the Council Books of the older municipalities, material is forthcoming which proves that the representative system underwent developements very similar to those which marked the history of Parliamentary representation in England. To a far greater degree than in England, borough representation in Ireland in the seventeenth century and in the early years of the eighteenth passed under the control of landed proprietors, a control which was more easily obtained and infinitely more easily held than in England.

Warping of the Representative System.

In Ireland the desire of the landed classes to obtain control of borough representation made itself manifest much later than in England. Seats in the Irish House of Commons were not in demand until after the Restoration. Until then, the cities and boroughs, especially those of an earlier origin than the creations of James I, were represented by residents; and as in England, so long as resident members represented the boroughs they were paid wages, and there were no efforts on the part of the corporations to arrogate to themselves the right of election, or to restrict the number of freemen entitled to exercise the Parliamentary franchise. Municipal exclusiveness and corruption in Ireland, due to the working of the Parliamentary system, came

[1] Cf. *Irish Municipal Commission, 1st Rep.*, 10, 11.

much later than in England; and, except in the boroughs created by James I, few of which were ever municipal corporations in the proper acceptance of the term, it may be concluded that the warping of the municipal constitutions of cities and boroughs due to Parliamentary electioneering did not begin until the last half of the seventeenth century.

Seats in Demand.

There is no lack of general and local evidence that seats in the Irish House of Commons were not objects of ambition until the reign of Charles II. The general evidence is to be found in the Journals; the local evidence in the Council Books of such populous towns and centres of trade as Cork, Youghal, and Kinsale. The most obvious indications of a demand for seats to be found in the Journals of the House of Commons, whether of England or Ireland, are the double returns, the records of controverted elections, and the entries which betoken an eagerness on the part of Parliamentary candidates to secure early and irregular possession of the writs. Such records and such entries are lacking in the Journals of the Irish House of Commons until 1661. In England controverted elections antedate the beginning of the printed Journals of the House of Commons. In Ireland the earliest recorded double returns were in 1661[1]; and the first controverted election occurred in 1662[2]. In that year, in a by-election at Trim, two persons claimed to have been chosen for the seat. In the same session an order was made by the House for preventing writs being given to private persons[3]. These evidences of election disputes carried from the constituencies to the House of Commons, and of the eagerness of candidates to secure advantages from early possession of the writs, may be accepted as proofs that seats in the Irish House of Commons were now in demand, and that men were willing to put themselves to trouble and expense to secure election.

No Demand for Seats in 1640.

Before the Restoration a seat in the House of Commons was not valued. Many of the members of the Parliament of 1613, knights of the shire as well as citizens and burgesses, were paid wages[4]. Youghal paid its representatives[5]; so did Carrickfergus[6]; while at Cork wages were paid as late as 1641[7]. Even stronger

[1] *H. of C. Journals*, I. pt. II. 379, 383.
[2] *H. of C. Journals*, I. pt. II. 572.
[3] *H. of C. Journals*, I. pt. II. 510.
[4] *H. of C. Journals*, I. 21.
[5] Caulfield, *Council Book of Youghal*, 22.
[6] McSkimin, *Hist. and Antiquities of Carrickfergus*, 68.
[7] Caulfield, *Council Book of Cork*, 202.

proof of the indifference with which a seat in the House of Commons was regarded is to be found in the Journals. As late as 1639 the sheriff of Louth ignored one of the boroughs in his county[1]; he would not have been permitted to do this had seats in the House of Commons been in demand. In 1640 the Lord Chancellor was indifferent or tardy in issuing writs for by-elections, and the House of Commons complained that it "had been deprived of the advice and counsel of many profitable and good members[2]." Sheriffs in the reign of Charles I were also tardy in issuing their precepts to the boroughs for by-elections, and had to be compelled to action by orders from the Commons[3]. In 1641 many boroughs failed to elect members[4]; and members who had been elected failed to attend the House.

Boroughs ignore the Precepts.

There is no trace in the representative history of Ireland of the manucaptors who discharged such important duties in the early days of the House of Commons in England. Manucaptors and the payment of wages and travelling expenses gave continuity and permanence to the representation of England, and helped to carry it through its first and critical period. In England, boroughs which felt themselves too poor to bear the cost of sending members to the House of Commons obtained permission from the Crown to be excused from the sheriff's precepts. In Scotland also a burgh which had once been of the Royal Burghs could not get free from its obligation to send members to Parliament and to the Convention of Royal Burghs without sanction of Parliament. In Ireland, until after the Revolution of 1688, boroughs simply ignored the sheriff's precepts to return members to Parliament; and not until personal advantages attached to membership were all the enfranchised boroughs represented in the House of Commons. Many Irish boroughs were as insignificant, some of them as non-existent, at the Restoration as at the Union; but from the Restoration, and especially from the Revolution, no borough, however few its inhabitants, failed to elect its two members. In many the number of inhabitants was a matter of indifference, for the inhabitants did not vote. When there was an election, outsiders, often from places far remote, came within the precincts of the town, and went through the form of returning members to the House of Commons. These were the boroughs which, between 1613 and 1661, failed to elect. They would have disappeared from the representative and

[1] *H. of C. Journals*, I. 137.
[2] *H. of C. Journals*, I. 163.
[3] *H. of C. Journals*, I. 246.
[4] *H. of C. Journals*, I. 241.

municipal systems of Ireland, with advantage to both, had it not been for the rewards that from the Revolution went to the landlords who controlled the boroughs and also to the men who represented these Irish Gattons and Sarums in Parliament.

Non-resident Members.

Before the Restoration there are at least two recorded instances in which candidates for Irish boroughs offered to forego the statutory wages. Lord-Deputy Wentworth in 1634 was anxious that Sir George Hamilton should be chosen one of the burgesses for Gowran: and in suggesting his nomination to Ormond, Wentworth wrote that he had no doubt that Hamilton would "well and honestly perform the trust reposed in him, and that without any charge to the place for which he shall be employed[1]." In the same year the representatives of the city of Cork "forgave the city all fees or stipends for services as members of Parliament[2]." But so far as can be traced remissions of wages were infrequent until after the Restoration. Then the representatives in Parliament of cities and boroughs, who were freemen in the original sense of the term and who were paid wages by their constituents for their services in Parliament, gave place to non-residents. They were succeeded by men on whom the freedom was conferred in order that they might represent the city or borough in the House of Commons, and who, on election, entered into agreements like those so common in the boroughs of England from nearly a century earlier, freeing the constituencies from the payment of wages.

The Remission of Wages.

After these agreements became general there was a movement in Parliament for the repeal of the law under which counties and boroughs were liable for the payment of their representatives. The House went into grand committee on the question in 1665; and from committee there was a report, to which the House agreed, setting forth that "the best expedient to prevent the inconveniences arising by collecting the wages of the members of the House, is that no warrants be issued for any wages due since the 27th of September, 1662, or that shall be due hereafter during the sitting of this Parliament[3]." In the following year a bill abolishing wages was passed by the House of Commons and transmitted to England under the procedure of Poynings' law. It came back, but was rejected by the Irish House of Lords[4]; and the old law survived until the Union. But on the eve of the dissolution of 1666 the

[1] *Hist. MSS. Comm. 14th Rep.*, App., pt. vi. 43.
[2] *Council Book of Cork*, 174. [3] *H. of C. Journals*, i. pt. ii. 448.
[4] Cf. Gale, *Ancient Corporate System of Ireland*, 190.

House freed the constituencies from the payment of wages to their representatives in the Parliament which was then coming to an end. This was done by a resolution, which declared "that, in respect of the poverty of this kingdom, and the many taxes now upon it, the members of this House do freely remit their several wages due unto them for serving in this Parliament, and that an order to this purpose be printed and published[1]." A resolution like this could affect only the House of Commons which passed it; and as late as 1727 members made agreements with their constituents by which they relinquished all claims for wages for attendance in Parliament[2]. The resolution of 1666 may, however, be taken as marking the end of payment of wages by constituents.

Records of Irish Boroughs.

Gale, who has done for the Irish municipal corporations what Merewether and Stephens have done for England, dates the corruption and warping of municipal constitutions in the freeman boroughs of Ireland, due to elections of members of the House of Commons, from the Parliament in which the resolution of 1666, remitting wages, was passed[3]. There is much less historical matter concerning the Irish municipal corporations than concerning those of England. Ireland from the reign of Charles II to the Union had one hundred and seventeen municipal corporations, all but forty-four of which dated no further back than the reign of James I; and of the seventeenth century creations, several were never organised as corporations, and thirty-five were municipal corporations only in name. They were not possessed of municipal buildings; and if there were any official records, other than those relating to Parliamentary elections, these records were as much the private property of the patrons as was the Parliamentary representation of the boroughs. So far the Royal Historical Manuscripts Commission, in its thirty years' work, has published few of the records of the Irish municipalities; and such as have been brought to light do not compare in historical value with the records and papers of the numerous English corporations embodied in the long series of reports issued since 1870 by the Commission. But the few existing sources of historical material, the Council Books and the local histories, and the Journals of the House of Commons, contain information which warrants the dating of Irish municipal corruption, due to Parliamentary electioneering, as beginning after the Restoration.

[1] *H. of C. Journals*, I. pt. II. 772. [2] Cf. *Council Book of Kinsale*, 229.
[3] Gale, *Ancient Corporate System of Ireland*, 191.

Until the Restoration the Irish freeman boroughs retained their original democratic constitutions. Before then, instead of endeavours to restrain the freemen from the exercise of the municipal and Parliamentary franchises, or to limit their number, freemen were compelled to attend the election of burgesses to Parliament under penalties for failure. Newcomers were also admitted to the freedom on easy conditions[1]. Youghal, for example, retained all the characteristics of a freeman borough at its best, even as late as 1719. Other of the freeman boroughs may have had inroads on their constitutions and usages a little earlier than Youghal. But until seats in the House of Commons became in demand, and borough control for Parliamentary ends brought with it advantages for borough patrons, there existed no obvious reason for the abuses arising out of the place of the boroughs in the representative system, which during the last century of the Irish Parliament marked both the freeman boroughs and the boroughs in which the right of election was in the corporation.

The Change of Character in Irish Municipalities.

Before the Revolution Roman Catholics voted for members of Parliament and were of the House of Commons. They were of the Parliament which met in 1613[2]. In the Parliament of 1634 Roman Catholics were nearly as numerous as Protestants[3], and until after the Revolution there were no oaths which uniformly excluded them[4]. The oath enacted in Elizabeth's reign[5]—an oath of allegiance to the Crown and disavowing any foreign authority—could be administered to members of the Irish Parliament. It was taken by many of the members in the Parliament of 1639–48[6]; and the House of Commons in 1642 moved for a bill to make it compulsory in that and future Parliaments[7]. No enactment followed this appeal of the House, "as humble suitors unto the Right Honourable the Lords Justices and Council, that a bill may be transmitted to England for this purpose." Catholics were of this Parliament[8]; and when, after an interval of thirteen years, Parliament again met, it appears from a resolution in the Commons Journals on the 15th of May, 1661, that it was then held not to be necessary to administer the oath of Elizabeth's reign, and

Roman Catholics in Parliament.

[1] Cf. *Council Book of Youghal*, 202, 413.
[2] Leland, II. 447.
[3] Cf. Masson, *Life of Milton*, I. 643.
[4] Mountmorres, *Ancient Parliaments of Ireland*, I. 157.
[5] 2 Eliz., c. 1.
[6] *H. of C. Journals*, I. 602.
[7] *H. of C. Journals*, I. 297.
[8] Cf. Froude, *English in Ireland*, I. 90

there was at least one Roman Catholic of the two hundred and sixteen members of the House of Commons of 1661–66[1].

Their Disqualification.

There was thus no religious disqualification in the Parliaments from Henry VIII to Charles II. In 1663 there was again a bill to make the oath of supremacy compulsory on members of Parliament. It failed to pass[2]. Again in 1677, when the calling of a Parliament was contemplated, it was proposed in the Irish Council to send to England a bill to prevent Papists—the term used for Roman Catholics in Irish legislation, in the Journals, and in all official documents until the closing years of the eighteenth century—from sitting in Parliament. The proposal created difficulties, which are held to account in part for the fact that no Parliament was called in 1677[3]; and the position of Roman Catholics remained unchanged by law until after the Revolution. Then, when the first Irish Parliament of William and Mary met on the 5th of October, 1692, "immediately after the Speaker had taken the Chair, a motion was made for the reading of the late Act of Parliament made in England in the third year of their Majesties' reign, entitled 'An Act for abrogating the Oath of Supremacy in Ireland, and appointing other Oaths[4],' whereupon the House immediately proceeded to the swearing of their members[5]." This is the brief record in the Journals of the means by which Roman Catholics were excluded from the Irish Parliament. The Act, passed in England for Ireland in 1691[6], rendered Roman Catholics incapable of serving, as it required persons elected to the Irish House of Commons to take the oaths of allegiance and supremacy under regulations similar to those enforced in England.

Continued after the Union.

After the Roman Catholic Enfranchisement Act of 1793, by which time nearly all the laws enacted against Roman Catholics between the Revolution and the reign of George II had been repealed, there was a movement, in and out of Parliament in Ireland, for the repeal of the laws rendering Roman Catholics incapable of service in Parliament. It was then unavailing; and the Irish Parliament had been merged in the Parliament of Westminster for twenty-nine years before an Irish constituency was again represented by a Roman Catholic.

[1] Cf. Froude, *English in Ireland*, I. 147.

[2] Mountmorres, *Ancient Parliaments of Ireland*, I. 159.

[3] Mountmorres, *Ancient Parliaments of Ireland*, I. 160.

[4] 3 W. and Mary, c. 2, English Statutes. [5] *H. of C. Journals*, II. 9.

[6] J. B. Brown, *An Historical Account of the Laws created against the Catholics both in England and Ireland*, 157.

# CHAPTER XLI.

## COUNTY REPRESENTATION FROM THE REVOLUTION TO THE RE-ENFRANCHISEMENT OF THE ROMAN CATHOLICS.

Legislation before the Revolution.

In 1692, the year from which all the Irish counties and all the boroughs first continuously returned members to the House of Commons, and which also marked the end of the long intervals between Parliaments, the county franchise was still based entirely on the Act of 1542. Between the reign of Henry VIII and the Revolution there had not been passed a single Act affecting elections of knights of the shire. In this century and a half there had been no legislation affecting either the franchise or the machinery of elections; and up to the Revolution there were on the Irish statute books only three Acts concerning the representation, one of which is the Act of 1542. The first Act was passed in 1478[1]. It provided that knights of the shire should dwell within the counties which they represented and be forty-shilling freeholders, and that proctors representing the clergy in the House of Commons should be beneficed within the diocese which they represented. The second of the enactments preceding the Act of 1542 was passed in 1537, and is significant chiefly because it was by this Act that proctors representing the clergy were denied voice and vote in the House, and were to be seated only as assistants or counsellors.

No Election Machinery provided.

These were the only statutes affecting the representation passed by the Irish Parliament before the Revolution, and by none of these was there set up any machinery for elections. Before the forty-shilling freeholder Act of 1542 had been passed by the Irish Parliament the English Parliament had enacted a code regulating elections. In 1405–6 there was the Act determining the particular county court at which the election of knights of the shire should be held; making it obligatory on the sheriff to proclaim elections;

[1] 18 Ed. IV, c. 11.

directing that elections should be "freely and indifferently" conducted; and establishing the form of indenture to be returned with the writ, a form which survived in England for nearly five centuries[1]. By the Act of 1427 the determination of contested elections was brought within the jurisdiction of the judges of assize[2]; and by the Act of 1429 sheriffs were given the power to examine voters on oath as to the nature of their qualification[3]. Fifteen years later the English Parliament also passed an Act determining the hours between which county courts for the election of knights of the shire could be convened[4]. These laws passed by the English Parliament were applicable to Ireland as well as to England; but the only Irish law earlier than the Revolution, in which the sheriff is named in connection with elections, is that of 1542. By a clause in this Act a sheriff who returned a member contrary to its provisions as to landed qualification and residence was liable to a penalty of a hundred pounds.

**English Election Procedure in Use in Ireland.**

Partly by usage, and partly under the operation of the English laws, election machinery in Ireland in the formative period of the representative system had been patterned, imperfectly but closely, on that of England. As in England, the sheriff of the county was the pivotal figure. To the sheriff went the writs for a Parliament. The sheriffs, as in England, convened the county courts for the election of knights of the shire, and, except in the case of cities and towns which were counties of themselves, of which there were eight[5], the sheriffs also issued the precepts to the boroughs within their counties. The English form of indenture, with the signatures and seals of freeholders present at the election, devised by the English Act of 1405–6, was in use in Ireland[6]. As long as knights of the shire in Ireland were paid their wages they were assessed at so much per plough land, and the money was collected, where it was possible to collect it, by the sheriff[7]. To the sheriffs also, when calls of the House were ordered, Speakers of the Irish House of Commons sent their letters, commanding them, as was done by Audley Mervyn in 1666, to acquaint such of their members as were then in their counties that "it is the pleasure and command of this House that they do forthwith repair hither,

[1] 7 Henry IV, c. 15, English Statutes.
[2] 6 Henry VI, c. 9.
[3] 8 Henry VI, c. 7.
[4] 23 Henry VI, c. 14.
[5] Carrickfergus, Cork, Drogheda, Dublin, Galway, Kilkenny, Limerick, and Waterford. *Irish Municipal Commission, 1st Rep.*, 26.
[6] Cf. *H. of C. Journals*, I. 3.
[7] *H. of C. Journals*, I. 44 and 56.

notwithstanding any leave of absence formerly granted to the contrary[1]." This was the usage at Westminster at this time; and in the Irish system of representation generally, as it existed before the Revolution, the position and duties of the sheriffs towards the electors, the boroughs, the members returned, and the House itself, were the same as in England. But the position of the sheriff seems to have been due to tradition and usage rather than to law as in England. After 1495 laws passed in England could be made applicable to Ireland[2]. I can, however, find no trace of those regulating elections being formally applied.

Defects in Machinery.

From the Revolution seats in the Irish House of Commons, county as well as borough, were much more in demand, and with the increased interest in elections, and the new eagerness of men to be of the House of Commons, the defects and shortcomings in the pre-Revolution election machinery became apparent. They became obvious to the House of Commons because they admitted of unconstitutional practices, with resulting work for the committees of privilege and elections.

Laws regulating Elections.

In the eighteenth century there was nearly as much legislation regulating elections, particularly county elections, as there was in England. The legislation, apart from that affecting Roman Catholics and the franchise, was directed to the perfecting of electoral machinery; to freeing candidates from the impositions of sheriffs and returning officers; and to checking bribery and preventing the creation of fictitious votes, practices which began as soon as seats in the House became objects of ambition. Several laws were aimed against the creation of fictitious county qualifications; and it was this legislation which accounted for the fact that, in 1829, when the forty-shilling freeholders were disfranchised, there was in Ireland a classification of freeholds unknown to the English system of representation. Irish freeholders were in 1829 divided into four groups—forty-shilling, twenty-pound, fifty-pound, and hundred-pound freeholds. All these freeholders had equal rights at the polls; though, from 1795[3], forty-shilling freeholders

[1] *H. of C. Journals*, I. pt. II. 543.

[2] "The common law of England is the common law of Ireland. All English statutes previous to the 10th of Henry VII were in force in Ireland, but no subsequent English statutes were binding on Ireland, unless Ireland were particularly named or included in general words." John Barrow, *Some Account of the Public Life of the Earl of Macartney*, I. 67.

[3] 35 Geo. III, c. 29.

had to live on or cultivate the freeholds from which they derived their qualification. The division into these four classes was due to the system of registration, the creation of which had been begun in the reign of George II.

Fictitious Qualifications.

Evidence as to the creation of fictitious county qualifications is to be found in the Journals as early as 1713. There is good reason, however, for believing that the manipulation of the forty-shilling franchise by the landlords was begun three-quarters of a century before any indications of the practice of creating fictitious votes can be traced in the printed Parliamentary records. "Divers freeholders" are said to have been made in order to increase the "number of choosers" in county Down at the election for the Parliament of 1640, at a time when county members were still paid Parliamentary wages; and voters were again made in Down at the election of the first Irish Parliament after the Restoration[1]. In 1713 it was complained to the House of Commons that sixty sham freeholders had been made in Roscommon; and it was averred in the petition that many of them "owned they had no other freehold than by deeds or rent-charges delivered to them after the date of the writ, out of lands they never saw, and for which they paid no consideration[2]." Again in 1715 there was a similar complaint from the county of Mayo[3]; and early in the session of 1715 heads of a bill to prevent fraudulent conveyances in order to multiply votes for the election of knights of the shire were sent from the House of Commons to the Lords Justices for transmission to England. The bill came back, and was enacted into law[4].

An Act to prevent their being made.

By this Act[5], the first of the Irish Parliament affecting the representation since 1542, it was provided that all estates and conveyances made in a fraudulent or collusive manner to qualify persons to vote should be held by the persons to whom they were conveyed, notwithstanding any condition to determine such estate or as to recovery, and persons to whom estates had been so conveyed were discharged from all trusts and conditions in such agreements. It was further enacted that no person was to vote for a freehold which had not been in his possession for six months before the date of the election, under a penalty of forty pounds, to be

[1] George Hill, *Montgomery MSS. 1603–1706*, pp. 307, 309, 417.
[2] *H. of C. Journals*, II. 73.
[3] *H. of C. Journals*, III. 16.
[4] *H. of C. Journals*, III. 16, 81, 92, 94, 112.
[5] 2 Geo. I, c. 19.

sued for by common informer. By this measure of 1715 also a freeholder's oath was first established in Ireland, as by its provisions any freeholder, if required by the candidates or by one of them, could be called upon to swear that he was a freeholder; that he believed that his freehold was worth forty shillings a year to a responsible tenant; that it had not been fraudulently granted to him; and that he had not polled before at the election at which he was offering to vote. There was a clause in this Act also aimed at bribery and treating; but it was neither drastic nor far-reaching. All that it enacted was that no candidate after the test of the writ was to give a reward or inducement, or promise of a reward, to an elector, or to entertain electors to meat or drink. The oath established by the Act made no reference to bribery, and no penalty was provided.

Registration of Freeholds.

As competition for seats in the House of Commons increased wider definitions were given to the term freeholder. Before the Act of 1715, in fact as early as 1698, benefices in the Church, and offices such as those of schoolmaster and town-clerk, were regarded as freeholds conferring the franchise[1]; and between the Act of 1715 and 1727 trustees and mortgagees were claiming and exercising a right to vote at county elections. By an Act passed in 1727[2] the provision as to six months' possession in the Act of 1715 was made applicable to trustees and mortgagees, a provision which affords proof that the franchise in Ireland was now deemed of value. This Act of 1727 is also significant in the history of representation in Ireland, because it laid the foundation of a system of registration which, with extensions and amendments made between the reign of George II and the Union, survived until the Reform Act of 1832. In 1727, for the first time in the history of the county franchise in England or in Ireland, distinctions between freeholders were established. Under this Act no freeholder whose freehold was under the value of ten pounds was to vote, unless a memorial of the deed by which his freehold was granted was entered six months before the date of election with the clerk of the peace. These entries were to be made in a book to which all might resort; and they were to specify the nature of the freehold, the name of the grantor and grantee, the lessor and lessee, with the quantity of land granted, the consideration, the rent received, and the date of the deed. For making these entries the clerk of the peace was entitled to a fee of sixpence.

[1] *H. of C. Journals*, II. 257.

[2] 1 Geo. II, c. 29.

Landlord Influence.

From the beginning of the eighteenth century landed proprietors in Ireland were exercising influence over their tenants and dependents, and making freeholds in order to control elections. In 1713 the London Irish Society, which had large properties in Ulster, directed letters to the corporations of Londonderry and Coleraine, "requiring them to promote the interest of Mr Secretary Dawson to be one of the knights of the shire for the county of Derry, and to make known such the Society's desire and recommendation in favour of Mr Dawson to all the freeholders[1]." In 1723 Mr Malone, a Westmeath landed proprietor, ordered his agent "to head his tenants in Mullingar to vote for Mr Rochefort[2]"; and there are other evidences that, before the eighteenth century was half-way through, Irish landed proprietors were adept at the practices which were common in Ireland after the Roman Catholics were enfranchised in 1793, and which became increasingly general until the Irish Catholic tenants began in 1826 to revolt against territorial control, and to follow the lead of O'Connell and the priests rather than that of their landlords. "It is well known," said Mr Flood, in the Irish House of Commons, in 1785, "that gentlemen in different counties agree to make freeholders on this condition, 'I will make forty or fifty freeholders in your county, if you will make the same in mine, and they shall go to you on condition that yours come to me.' Thus they travel about; and a band of itinerant freeholders dispose of the representation of the country; while mock electors are brought from north to south, and from south to north, an army of fictitious freeholders produced as true[3]."

Early Appearance of the Fictitious Freeholder.

At the time when Mr Flood described county electioneering, Roman Catholics were excluded from the franchise, and the number of electors was much smaller than between 1793 and 1829 when the forty-shilling freeholder in counties in Ireland disappeared from the electorate. The organised bands of itinerant freeholders, whom Flood described, apparently came into existence soon after the practice of creating fictitious freeholders began; for, nearly forty years before Flood's speech, the Irish Parliament had passed a law intended to suppress them[4].

Opportunities for their Creation.

While from the Revolution to the Octennial Act of 1768 general elections in Ireland were much less frequent than in

[1] Charles Reed, *Hist. Narrative of the Irish Society*, 55.

[2] *H. of C. Journals*, III. 341.

[3] *Parl. Reg.*, v. 151.

[4] 21 Geo. II, c. 10.

England—as, during this period, Parliaments lasted for the lifetime of the sovereign—the fact that the sessions of Parliament were held only in alternate years greatly stimulated the creation of fictitious freeholds with a view to by-elections, and made it easy to evade the Acts of 1715 and 1727. Until 1771[1] the Speaker of the Irish House of Commons was not empowered to issue new writs during the Parliamentary recess. Consequently as long as the system of Parliaments lasting for the lifetime of the sovereign survived, if a member of the House of Commons died soon after the end of the session, the candidates for the vacant seat had nearly a year's notice of the election; and, in the interval between the vacancy and the election, they could create freeholders who would have no difficulty in proving that they had been in possession of their qualifications for six months prior to the issue of the writ.

By-elections.

In this period of the Irish Parliament members never retired. Until 1793 there was nothing in the procedure of the Irish House of Commons corresponding to the Chiltern Hundreds in the English House[2]; and before the use of the escheatorships of Munster and Connaught was introduced in that year a seat in the House of Commons in Dublin could be vacated by death, by being made a peer or a judge, or by taking holy orders: but by no other means whatever, save expulsion from the House[3]. Prior to 1793 if an Irish member were tired of Parliamentary service, or had grown too old and feeble to care to spend three or four months in Dublin in discharging it, he simply stayed away, but continued a member of the House. In the long lifetime of Parliament vacancies necessarily occurred, and as Parliament met only in alternate years, there was often a long interval between a vacancy and an election, which afforded opportunities for corrupt electioneering lacking in England, where, even before the Speaker had power to issue writs in the recess, annual sessions made the interval between vacancies and elections much shorter.

Registration Act of 1745.

The legislation of 1715 and 1727 apparently did little to check corrupt practices in Ireland; and in 1745 it was conceded by Parliament that the registration clauses of the Act of 1727 had lent themselves to evasion. They were accordingly repealed, and a new system involving more publicity and creating a new freeholder's oath was established. Under the Act of 1727 freeholders whose

[1] 11 Geo. III, c. 10.

[2] 33 Geo. III, c. 141.

[3] Cf. J. G. Swift MacNeill, *How the Union was carried*, 100.

lands were of less value than ten pounds a year were required to enter the qualifications with the clerk of the peace. Under the Act of 1745[1] registration was to be made at quarter sessions, six months before elections; and every freeholder, whose qualifying property was of a value between forty shillings and ten pounds, was required in open court to take oath as to its possession and its value. The declaration was afterwards delivered to the clerk of the peace by whom it was registered.

Increased Stringency of the Law.

In the next session of Parliament, in 1747, there was more legislation to prevent the creation of freeholders. Persons claiming to vote in respect of rent-charges of a less value than ten pounds were excluded unless they were able to prove that they had actually received for their own use such rent-charges at least one year before the occurrence of the vacancy to supply which they were tendering their votes[2]. To check the making of freeholds when an election was pending, it was enacted in this statute that no person should be qualified to vote by virtue of a freehold made or obtained after the vacancy had happened. By this Act of 1747, also, an addition was made to the freeholder's oath, with a view to putting an end to the practice of mutual support on the part of landed proprietors in neighbouring counties. By the law as it stood up to this time, the freeholder had been liable to be called upon to take oath that he had not accepted his qualifying estate fraudulently, or on purpose to qualify him to give his vote at that particular election. By the addition to the oath made in 1747 he had, if called upon, to declare that he had not accepted his freehold "by way of barter or exchange for a freehold of equal value in any other county." Rent-chargers, claiming to vote, were also made liable to an oath that they had received the rent-charge to their own use for a year before the election; instead of, as heretofore, making oath that they believed their qualifying property might be let to a responsible tenant at the value they had placed upon it.

The Sheriff's Court.

The legislation of 1715 and 1727 also dealt with the position and duties of the sheriff as returning officer. Until 1715 there was no law such as there was in England, determining where the sheriff should convene the county court. By the Act of 1715 sheriffs were compelled to convene it where the assizes for the county were last held, and adjournments longer than from day to day were made illegal, unless with the consent of the candidates[3].

[1] 19 Geo. II, c. 11. [2] 21 Geo. II, c. 10.
[3] 2 Geo. I, c. 19.

Soon after the Revolution there were complaints to the House of Commons of returning-officers' charges; and in 1697 heads of a bill were passed "to prevent charge and expense in elections of members to serve in Parliament; to regulate elections; and to prevent irregular proceedings of sheriffs[1]." As was customary with measures framed under Poynings' law, this bill of 1697 was carried from the House of Commons to the Lords Justices, who were desired to put the heads into form and transmit them to England. The member who carried the bill to the Lords Justices reported, on his return to the House of Commons, "that their Lordships were pleased to say they would order the same to be done accordingly[2]"; but, like many other bills, that of 1697 did not come back to the House, and there was no legislation affecting returning-officers' charges until 1727. Sheriffs' Charges.

In the intervening thirty years, as can be ascertained from the Journals, and occasionally from the personal memoirs of this period, there were many complaints against sheriffs and returning-officers in boroughs; complaints which make it clear that they often failed to approach their duties in the constitutional spirit usual by this time with returning-officers in England, and especially with sheriffs in English counties. Irish sheriffs, it must be remembered, had fewer laws to guide them, and also fewer traditions than English sheriffs; for the long intermissions in Parliaments in the sixteenth and seventeenth centuries, and the less frequent appeals to the constituencies during the greater part of the eighteenth century, were against the growth of traditions likely to be helpful to sheriffs in the non-partisan fulfilment of their duties as returning-officers. Partisan Sheriffs.

Complaints against the Irish sheriffs began to be common soon after the Revolution. In 1709 the sheriff of Kerry was reprimanded by the House for taking upon himself to decide as to the qualifications of a candidate[3]. The sheriff of Galway at the same general election so far ignored his duties as sheriff, in his eagerness as a partisan, that he arrested voters who appeared to support the candidates to whom he was opposed, and "threatened many others, by showing them a bundle of writs and outlawries, and by other means deterred them from giving their votes[4]." After the general election of 1713 there were so many complaints against returning-officers that an instruction was given to the committee of privileges Complaints against them.

[1] *H. of C. Journals*, II. 169.
[2] *H. of C. Journals*, II. 169.
[3] *H. of C. Journals*, II. 617.
[4] *H. of C. Journals*, II. 648.

and elections "to examine and make special report of all miscarriages and undue practices of sheriffs, mayors, and bailiffs, as likewise of all undue practices, letters, promises, threats, or oppressions, in any election[1]." The number of petitions in this year was so large that the committee was compelled to sit three days a week, instead of two, as had hitherto been usual[2]. From the borough of Carlow there was a complaint that the sovereign, who was the returning-officer, had stood as candidate and returned himself, contrary to the ancient usage and laws of Parliament[3]. There were several complaints that at county elections sheriffs had closed the poll-books when it suited the candidates in whom they were interested[4]. Of the sheriff of Cavan it was complained that he had openly declared himself pre-engaged, that his interests were with one of the candidates; and from Galway there was a complaint that the sheriff had held the county court at an inconvenient place[5].

Restrictions on Returning-Officers.

The result of these complaints after the election of 1713 was a resolution of the House defining in some degree the position of returning-officers. "No sheriff of a county, mayor, provost, portreeve, sovereign, or other chief magistrate of any city or borough or corporation, nor seneschal of any manor," it reads, "has the right to vote in any election, except where the votes of the electors are equal, unless where by express words of a charter they have other or greater powers, or where there hath been usage to the contrary, time out of mind, in boroughs by prescription[6]."

Extra Votes for Returning-Officers.

Youghal was a borough where there was such a usage. From the Council Book of the corporation it is possible to ascertain how this usage began. It dated at Youghal no further back than 1612. The phraseology of the order of the corporation suggests, however, that before 1612 mayors in Irish towns had not been expected to be non-partisan when acting as returning-officers in any election, but, on the contrary, were endowed with more votes than ordinary electors, and were expected to use them. It is set out in the preamble of the order of the Youghal Corporation, "that in all flourishing towns, the chief officers, as men of good demerits, are in more estimation than others of an inferior rank, for that magistrates by long experience know what is best." "It is therefore enacted by the mayor, bailiffs, burgesses, and commons,"

[1] *H. of C. Journals*, II. 752.
[2] *H. of C. Journals*, II. 752.
[3] *H. of C. Journals*, II. 775.
[4] *H. of C. Journals*, III. 25.
[5] *H. of C. Journals*, III. 27.
[6] *H. of C. Journals*, II. 769.

continues the order, "that every mayor shall have in every election three single voices; the recorder, bailiff, and aldermen two single voices apiece[1]." Until the Union the usage recognised in the resolution of the House of Commons of 1713 was continued in boroughs; and the extra votes enjoyed by mayors and sovereigns explains to some degree why borough patrons so often filled these municipal offices. Irish borough patrons were more frequently of the corporations, and much more frequently mayors or sovereigns, than borough patrons in England.

Returning-Officers' Duties.

Except for the clause in the Act of 1715 determining where county courts were to be convened, there was no legislation with respect to the procedure of sheriffs until 1727[2]. Then it was enacted that within four days of the receipt of the writ, sheriffs were to send their precepts to the boroughs, to such returning-officers as made the last returns, and were to accept the returns made only by such officers. Returning-officers in boroughs were to hold the elections within twenty-one days after the receipt of the precepts, and in some public place within the borough were to give four days' notice of the election.

Official Charges.

In this Act of 1727 there was also a clause of a character different from any legislation ever passed in connection with the representative system in England: and to this and subsequent legislation passed by the Irish Parliament is due the great difference in the expenses incurred by candidates in England and in Ireland at the election which followed the Reform Act of 1832, set out in the Parliamentary returns, the first returns of the kind ever made. The Act of 1727 ordained that no fee, gratuity, or reward whatsoever, should be given or paid to or taken by a sheriff, mayor, sovereign or portreeve, or any other officer, for making out or delivering a return, or for the execution of any writ of election. Flood's statement in the House of Commons in 1785 as to the practice of landed proprietors in adjoining counties making freeholds to afford each other mutual support at elections, and the succession of Acts, from 1715 to 1785, aimed against the creation of freeholds, show that much of the legislation regulating Parliamentary representation, and protecting the franchise, was either ignored or evaded. But there is proof that the Act of 1727 stood Parliamentary candidates in good stead, and adequately protected them from exactions and impositions such as were long borne by Parliamentary candidates in England, and for which

[1] *Council Book of Youghal*, 18.

[2] 1 Geo. II, c. 9.

sheriffs and deputy sheriffs and other returning-officers had no warrant other than custom.

The Election Code until the Octennial Act.

In 1763 there was an Act adding an oath against bribery to the oaths to which a county elector was already liable. Until 1775 the Acts of 1715, 1727, 1747, and 1763, with the Act of 1542, formed the Irish election code. In 1768 the Octennial Act was passed, and as elections were now to become more frequent, the laws regulating them engaged much attention in the House of Commons. The House went into committee of the whole to consider the amendments deemed necessary. The report from the committee is of interest, as a statement of the defects and shortcomings of the election code, and also as indicating some phases of Irish electioneering in the seventy years when general elections were infrequent, and when political life in the constituencies was stimulated chiefly by by-elections.

Suggested Reforms.

For many years after 1768 there was no statutory limit to the time over which county elections might be extended. Polling was often protracted over two or three weeks[1]. In reporting to the House, the committee of 1768 declared itself of opinion that "the great expense and dissipation caused by the continuance of the poll at elections for many days, sometimes weeks, tends to corrupt the morals of the people, and lessen the freedom of election." As to the franchise, the report of the committee touched chiefly on the vexed question of the creation of fictitious freeholds. The committee declared its opinion that "the permitting of persons to vote as freeholders" for rent-charges of forty shillings "is an inlet to corruption, and that such freeholders are of no real advantage to the public." It was recommended that "if freeholders of less yearly value than ten pounds had some public object upon their freeholds, by which it might be known where their freeholds lie, the same would tend to prevent fraud, imposition, and the danger of perjury"; and it was suggested that "if such freeholders had each a tenement occupied by himself or tenant, with one or more glass windows, and a chimney of lime and stone, or lime and brick, the same would answer the ends aforesaid, and tend to the welfare of poor Protestants and improvement of the kingdom[2]." In regard to the machinery and the conduct of elections the committee of 1768 recommended that sheriffs should be compelled to appoint deputies to aid them in taking the polls; that penalties should be inflicted on all persons convicted of disturbing the poll, or unneces-

[1] Cf. *H. of C. Journals*, IX. 146.

[2] *H. of C. Journals*, VIII. 236.

sarily protracting the time of election: that all the laws relating to elections should be reduced into one Act, and the oaths to be taken by electors be made as short as the subject-matter would allow: and that candidates should be compelled to take oath to refrain from treating and entertaining electors[1].

Proposed Disfranchisement of Placemen.

The House of Commons accepted this report of the committee of 1768; and four members, Dr Lucas, Edmund Sexton Pery, who was afterwards Speaker, Robert French, and William Tighe, were deputed to draw up the heads of a bill embodying the recommendations. The debate in the House on the subsequent stages of the measure stands out a little in the history of the Irish representation, because there was then begun the agitation for the disfranchisement of excise and customs officers, an agitation which was continued in every subsequent Parliament until 1793. It was proposed to add a clause that "no person employed in managing or collecting the public revenues, except the chief commissioners of the revenue, and the several collectors of the excise and customs, be admitted to vote at elections[2]." But in 1768, as on many subsequent occasions, the Government strongly opposed the disfranchisement of these officers. The motion was negatived, and revenue officers continued to vote at elections until 1793.

Reform in 1775.

The bill embodying the recommendations of the committee of 1768 was transmitted to London by the Privy Council[3]. But it did not come back to the House of Commons for its final stages: and until 1775 there was no legislation on the lines agreed upon by the House of Commons in 1768. In 1775 most of the recommendations of the committee of 1768 were again embodied in a bill, which became law[4]. Persons claiming to vote in respect of rent-charges of less than twenty pounds a year were now excluded from the franchise, on the ground that "the permitting of persons to vote by virtue of rent-charges of small yearly value is a great inlet to perjury, and tends to destroy the freedom of elections." It was enacted also that candidates convicted of giving bribes should be disabled, and "regarded to all intents, constructions, and purposes, as if they had never been returned or elected to the Parliament." The machinery of elections was improved by a clause which provided "that in all cases where the election cannot be determined upon view, and a poll shall be demanded, the sheriff or returning-

[1] *H. of C. Journals*, VIII. 236.
[2] *H. of C. Journals*, VIII. 244.
[3] *H. of C. Journals*, VIII. 255.
[4] 15, 16 Geo. III, c. 16.

officer, whenever it shall appear that upon the last or any former election the number of electors have exceeded four hundred, shall before the commencement of the poll appoint one deputy to take the poll under him." It was further enacted that the sheriff should not adjourn the poll for a longer time than from day to day, except from Saturday to Monday, unless with the consent of all the candidates.

Forcing the Closing of the Poll.

In 1768 there were complaints to the House of Commons that riots were frequently organised with a view to compelling the sheriff to close the poll-books, or to afford him a pretext for so doing to the advantage of candidates of whom he was a partisan. Again in 1774 there were complaints of riots; and it is recorded in the Journals that "at the last general election, the poll at several county elections was broken up by riots," and "that these riots afforded sheriffs a pretext for making improper returns of members[1]." Riots organised with the intention of affording a pretext to partisan sheriffs had occurred at county elections and at elections in the large cities from the beginning of the eighteenth century. They were the expedient often resorted to by one of the contending parties when in danger of defeat. A contemporary pamphleteer, who was on the popular side in the city of Dublin election in 1749, brings out the nature of the emergency which was commonly met by a riot. "And now," he writes, in describing the progress of the poll of the Dublin freemen and freeholders, "the hopes of all the friends of liberty began to revive, and those of their rivals, aldermen and mendicants, visibly to droop. It was, however, feared that the aldermen would occasion some riot, and, whilst they had the majority, oblige the sheriffs to close their books[2]."

An Act to check the Practice.

To stop these practices it was provided by the Act of 1775 that "if any person or persons shall violently and outrageously disturb the court, or interrupt the proceedings of such poll, such disturbance or riot shall not be any excuse to the returning-officer, nor afford him any pretence for closing the poll, or making a return; but the court shall be adjourned for some convenient time as the occasion may require, and continued by adjournment from time to time until such disturbance shall have ceased." It was further enacted that every person who should be convicted of outrageously disturbing a county court, "or of having wilfully defaced, obliterated, torn, or altered, or destroyed the whole or any part of the

[1] *H. of C. Journals*, IX. 146.

[2] *Dublin Election*, 1749, by a Briton, London, 1753, p. 61.

poll-book of a returning-officer, or of having forcibly or fraudulently secreted the same"—practices hitherto common at elections—"shall be judged guilty of felony, and transported for seven years to some of his Majesty's plantations abroad."

County Electioneering.

Beyond the reports from committees of privileges and elections to be found in the Journals, there seems little contemporary testimony as to the conduct of county elections in Ireland during the period in which the franchise was exclusively in the possession of the Protestants. Occasionally in the letters and papers of Irish families which have been published by the Historical Manuscripts Commission, there are passing glimpses of electioneering in the days when Poynings' law still held the Irish Parliament in a dependent position. From the Charlemont Papers, for example, it can be learned that in 1753 "upwards of one thousand pounds" were spent by Lord Charlemont in carrying the county of Armagh for his brother Mr Francis Caulfield[1]; and that in 1768 it cost Sir Lucius O'Brien two thousand pounds to secure his election for county Clare[2]. But memoirs, diaries, letters, and biographies, such as make it possible to realize how, at this period, county elections were carried on in England, are lacking in regard to Ireland, and the chief sources of information are the Journals and the statute books.

Lack of the Constitutional Spirit.

The Journals contain many reports of election committees, which show a marked absence of the constitutional spirit in Irish electioneering; and laws such as that of 1775, for the prevention of rioting and the mutilation of poll-books, indicate that Parliament regarded as well-founded the statements made in election petitions and in election committee reports, as to the partisan spirit manifested by returning-officers, and as to the expedients employed to carry county elections. English county elections all through the eighteenth century were usually fought with spirit. Territorial families striving for political supremacy occasionally brought themselves to the verge of bankruptcy by their lavish expenditure on elections. In England as in Ireland there were laws against splitting freeholds and bribery; but one searches in vain in the English statutes for enactments intended to prevent riots deliberately organised to give sheriffs a pretext for closing polls, or to authorise judges to send into transportation men convicted of mutilating or secreting poll-books.

[1] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 5.

[2] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 330.

Effect of the Octennial Act.

During the agitation in 1762 for a Septennial Act, the merchants, traders, and citizens of Dublin, in public meeting had adopted resolutions in support of the bill to that end which had been transmitted to England but not returned. One of these resolutions declared that "no doubt can remain that a septennial limitation of Parliament would render the generality of landlords assiduous in procuring Protestant tenants, and that the visible advantages accruing would induce others to conform[1]." The Octennial Act of 1768 apparently worked as the authors of the Dublin resolution of 1762 had anticipated. With elections occurring more frequently, landlords were more zealous than before in cultivating their Parliamentary interests, and in creating freeholds. Burke in a letter to Sir Hercules Langrishe, written in 1792, stated that he had good reason to believe, "particularly since the Octennial Act, that several landlords had refused to let their lands to Roman Catholics, because it would so far disable them from promoting such interests in counties as they were inclined to favour[2]." At this time many of the disabilities of the Roman Catholics had been removed. They were, however, still excluded from the franchise; and a landlord with only Roman Catholic tenants could exercise little influence in county elections. That in the years following the Octennial Act landlords were extending their influence by creating freeholds, seems to be proved by the fact that, in 1786, Parliament again amended the registration laws, in order to check practices against which, from 1727, those laws had been aimed. Until 1786 only forty-shilling freeholders had been required to register at quarter sessions. By the Act of 1786[3] ten-pound freeholders, and all freeholders whose qualifications were under the yearly value of one hundred pounds, were compelled to register at least six months before an election. Local courts for registration were established by means of a clause which gave magistrates in quarter sessions power to adjourn registration courts "to any market town in the county on the usual day of holding the market."

The Act of 1795.

After the Act of 1786 the next changes in the law affecting the franchise and machinery of elections came in 1795, when, in consequence of the new conditions due to the enfranchisement of Roman Catholics by the Act of 1793, it was found necessary to

[1] Plowden, *Hist. Review of the State of Ireland*, 1805, II. 83.
[2] Burke, *Works*, Ed. 1866, IV. 255, 256.
[3] 26 Geo. III, c. 23.

consolidate and amend the laws. A residential qualification was then established for forty-shilling freeholders[1] and all freeholders under the value of ten pounds; and by a revision of the registration system new distinctions were set up among freeholders—distinctions which survived the Union, and were continued until the forty-shilling freeholders in counties were disfranchised by the Act of 1829.

No Land Tax in Ireland.

In England a county elector could not vote unless the land tax had been paid in respect of the freehold which qualified him. There was no land tax in Ireland; and to the Irish freehold qualification there never was added any tax-paying qualification. Shortly before the re-enfranchisement of the Roman Catholics the number of county electors in Ireland was estimated at about forty thousand[2].

[1] 35 Geo. III, c. 29.

[2] Cf. *Parl. Reg.*, ix. 368.

# CHAPTER XLII.

## THE FRANCHISE WITHHELD FROM THE ROMAN CATHOLICS.

First Exclusion of Roman Catholics.

By direct enactment, in which they were specifically named, the Papists or Roman Catholics were excluded from the Parliamentary franchise from 1727[1] to 1793[2]. But much earlier than 1727 they had been under disabilities in the exercise of the franchise; and in 1793, when the bill re-enfranchising Roman Catholics was before the House of Commons, no historical question created more controversy than that of the exact date at which Roman Catholics ceased to vote, and the statute by which their first exclusion from the franchise was brought about.

Evidence of the Exclusion of Papists before 1727.

Foster, who was subsequently Speaker of the House, contended that the exclusion of Roman Catholics dated further back than 1727. "It had been asserted and relied on," he said, "that the Roman Catholics had exercised the right to the franchise until the first year of George II. This was not the fact; for by every research he could make, they never exercised it since the Revolution, and he would prove it from the Journals, which gave the best evidence as to the practice and usage of Parliament." "He read," continues the summary of his speech in the Parliamentary Register, "the Resolution of this House in 1697, declaring *nem. con.*, that Papists ought to be excluded from the right of voting. He then stated that in 1709 their right came in question on the petition of Mr Cuffe, for Irishtown. The case was that thirty-six Papists had offered for Mr Cuffe, and if they were admitted he was duly elected. The portreeve alleged that he refused them, having been informed that they had been refused at Ross, and had not voted for many years. There was no evidence to show that they had voted elsewhere, and the committee resolved that the sitting

[1] 1 Geo. II, c. 9. [2] 33 Geo. III, c. 21.

member was duly elected, thereby declaring Papists had no vote[1]." In further support of his contention that Roman Catholics were not voting between the Revolution and 1727, and were not permitted to vote, Foster cited the preamble to the Act of Queen Anne[2], by which Papists were compelled to take the oaths of allegiance and abjuration at quarter sessions before voting[3]. Foster also quoted the preamble of the Act of George I, which made voters liable to the oaths of allegiance and supremacy, and declared that all these authorities—the Journals of 1697 and 1709, and the Acts of Queen Anne and George I—justified his assertion that Roman Catholics did not vote after the Revolution, "and particularly," added Foster, "when it is considered that a resolution in the House of Commons in those days directed all matters of election[4]."

Evidence against this Exclusion.

Grattan answered Foster with the statement that "the Catholics in numbers" conformed to the Act of Queen Anne, and declared that the Act of George II was the first imposing legal disfranchisement. Lord Mountmorres in his *Ancient Parliaments of Ireland* states that Roman Catholics exercised the electoral franchise until 1715[5]: while Wise, the historian of the Catholic Association of Ireland, James Baldwin Brown, the author of *An Historical Account of the Laws enacted against the Roman Catholics both in England and Ireland*, and Sullivan, in his *From the Treaty of Limerick to the Establishment of Legislative Independence*, all affirm that it was by the Act of 1727 that Roman Catholics first lost the right to vote. Sullivan agrees with Wise that the clause expressly naming the Papists for disfranchisement in the Act of 1727 was smuggled into it. His statement is that it was "with the object of preventing any amicable relations between Catholic voters—for the Catholics still retained to some extent the Parliamentary franchise in the counties—and Protestant candidates[6]."

[1] *Parl. Reg.*, XIII. 335, 336.

[2] 2 Anne, c. 6.

[3] The preamble sets forth that "many persons so professing the Popish religion, have it in their power to raise divisions among Protestants by voting in elections for members of Parliament"; while the Act itself declares that the oaths of allegiance and abjuration are "for the purpose of preventing Papists having it in their power to breed dissension among Protestants by voting at elections."

[4] *Parl. Reg.*, XIII. 336.

[5] Mountmorres, I. 162, 163.

[6] Sullivan, "From the Treaty of Limerick to the Establishment of Legislative Independence," in *Two Centuries of Irish History, 1691 to 1870*, p. 51.

Wise's statement is that "the Catholic freeholder was disfranchised before the Catholics could be apprised that even such a bill was before the House," and that the bill "received the Royal assent before they could even protest against it[1]."

A Roman Catholic Account of the Act of 1727.

Brown goes into more detail, and affirms that the Roman Catholics had not regarded themselves as disfranchised by the Act of George I, making electors liable to the oath of supremacy, nor by the Act of Queen Anne. "The first of these Acts," he writes, referring to the statutes against Papists of the reign of George II, "deprived the Catholics of the last mark of citizenship which the disfranchising code of the preceding reigns had left them, it being enacted that no Papist should vote for a member of Parliament or magistrate of any corporation even though he be not convict. By this means five-sixths of the inhabitants of Ireland were deprived of a vote in the election of those representatives by whose acts, as the supposed organs of the public voice, they were nevertheless to be bound. This total disfranchisement of by far the greater part of a large people was conducted with that perfect nonchalance which is the general attendant on a power that feels its own security. The clause by which it was effected was introduced into the Act by way of amendment, without notice, and was passed without debate. The immense body whom it thus deprived of the most important of their political rights, were prevented from petitioning to be heard by counsel against the bill from the title under which it was introduced and discussed containing nothing which could awaken their jealousy. It was merely called, as in the statute book it is still entitled, 'An Act for the further regulating the election of members of Parliament, and preventing the irregular proceedings of sheriffs and other officers in electing and returning such members.' Under so inoffensive an exterior who could have dreamed that the Irish House of Commons concealed that dagger by which they inflicted the death-blow on the political rights of the greater part of those who had given them their legislative existence? Yet so it was; and the elective franchise, which even the ferocious Acts of Anne had not ventured to touch, without the shadow of a necessity was thus so completely destroyed that the Catholics of Ireland from that moment ceased to have a political existence[2]."

[1] Wise, *Hist. Sketch of the Late Catholic Association of Ireland*, I. 29.

[2] Brown, 291, 292, 293.

The Balance of Evidence.

Notwithstanding Foster's statements in the debate in the Irish House of Commons in 1793—statements which, as regards the decision of the election committee in the case of the borough of Irishtown, are borne out by the Journals[1]—the verdict of more recent students of the political history of the Roman Catholics of Ireland is that they had not regarded themselves as disfranchised by the Act of George I making electors liable to the oath of supremacy. Archbishop Boulter's recent biographer takes this view, and speaks of the disfranchisement clause of the Act of 1727—the clause for which he concedes that Boulter was responsible—as depriving the Roman Catholics of "the sole constitutional right they had hitherto been allowed to exercise[2]." The oath of supremacy of 1715 cannot have entirely shut the Catholics out from the county franchise, or Boulter would not have exerted himself to embody the disfranchisement clause in the Act of 1727.

Roman Catholics absolutely unrepresented.

Between 1727 and 1793 the Roman Catholics were effectively excluded from all part in the representative system. They were, to quote Burke's description of their position during this period of nearly seventy years, deprived of "all concern or interest or share in the representation, actual or virtual." "I here mean," wrote Burke, who had previously pointed out that no candidate for Parliamentary interest was obliged to the least attention towards the Roman Catholics[3], "to lay an emphasis on the word virtual. Virtual representation is that in which there is a communion of interest and a sympathy in feeling and desires between those who act in the name of any description of people and the people in whose names they act, though the trustees are not actually chosen by them. That is virtual representation. Such a representation I think to be in many cases even better than the actual. It possesses most of its advantages, and is free from many of its inconveniences; it corrects the irregularities in the literal representation, when the shifting current of human affairs or the acting of public interests in different ways carries it obliquely from its first line of action....But this sort of virtual representation cannot have a long or a sure existence, if it has not a substratum in the actual. The member must have some relation to the constituent. As things stand, the Catholic as a Catholic and belonging to a description, has not virtual relation to the repre-

[1] *H. of C. Journals*, III. 648–653. [2] *Dict. Nat. Biog.*, VI. 7.

[3] Cf. Letter to a Peer of Ireland, on the Penal Laws against Catholics, Feb. 21st, 1782, Burke, *Works*, IV. 225.

sentative, but the contrary[1]." In Ireland from 1727 to 1793 there was no mutual obligation between members of Parliament and Roman Catholics; "and the several descriptions of people were kept apart as if they were not only separate nations but separate species[2]." While the Roman Catholics were in this position they were ignored by Government, as well as by the representatives of the Protestant electors sent to the House of Commons. "The allegiance of the Papists," wrote Sir John Blaquière, secretary to Lord Harcourt, then Viceroy of Ireland, to Lord North in 1775, "adds nothing to the strength of government in Ireland. The Catholic interest can command neither speech nor vote[3]."

A Charge against Roman Catholics.

In the debate in the Irish House of Commons on February 4th, 1793, on the motion for leave to bring in a bill for the relief of Roman Catholics—the measure by which they were subsequently re-enfranchised—Dr Duigenan, who opposed the bill at this and all its subsequent stages with more vigour than any other member of the House, made a statement reflecting on the attitude of the Roman Catholics towards the representation during the seventy years that they were by law deprived of any part in it. "I do indeed admit," he said, "that at all county elections in this kingdom there are to be found Catholics wicked enough to perjure themselves by swearing that they are not Catholics, to enable them to vote[4]." The only authentic sources from which it is now possible to ascertain the attitude of the Roman Catholics towards the franchise during the long years of their exclusion are the records of the election committees of the House of Commons. In proportion to the number of counties and the frequency of elections, petitions from Irish counties in this period were much more numerous than from counties in England. But a study of election committee reports, especially later than the Act of 1727, affords no general corroboration of the charge which Dr Duigenan made against the Roman Catholics in 1793.

The Position of Roman Catholics.

The exclusion laws added to the work of election committees. There were numerous petitions against county returns based on violations of the Acts of 1715 and 1727. Offenders in most cases were, however, Protestants who had married Papist wives. These burgesses and freeholders had the right to vote if they could prove that their wives had conformed to the Protestant religion.

[1] Letter to Sir Hercules Langrishe, Burke, *Works*, IV. 293, 294.

[2] Letter to Sir Hercules Langrishe, Burke, *Works*, IV. 294.

[3] Froude, *English in Ireland*, II. 175, 176.

[4] *Parl. Reg.*, XIII. 115.

With respect to men who had been Papists all their lives the position was different. Protestants and Papists in Ireland all through the eighteenth century stood apart, "not only as separate nations, but as separate species"—as much apart as whites and negroes in the Carolinas and Georgia to-day. The dividing line was obvious to all. Only a few of the Irish counties, until after 1793, had more than a thousand electors. In 1777 the number polled in Castlereagh was only 594[1]; in Sligo 753[2]. In Queens county at a by-election in 1779, 1,080 electors went to the poll[3]; and in 1789 it was stated in the House of Commons that the number in the county of Waterford was about 470[4]. The polling at county elections was tediously slow, as during the greater part of the period when Roman Catholics were excluded from the franchise electors might be called upon to take any or all of three oaths. It followed therefore that in a closely contested election a Papist who presented himself to vote must inevitably have run great risk. An examination of election petitions and election committee reports warrants the inference that few Papists sought to vote after they had been excluded by the Act of 1727.

Their Activity at an Election in 1713.

In 1713—when only the oaths of allegiance and abjuration, and the resolutions of the House of Commons of 1697 and 1707, stood between a Papist and the Parliamentary franchise—there was a petition from the county of Roscommon complaining that several Popish gentlemen, "without regard to the laws for preventing Papists breeding any dissension among Protestants at elections," had interfered "in a zealous and most industrious manner, contrary to the laws of the land and the rights of electors, and that as well before as on the day of election, and after the writs were issued, by making several occasional freeholders." Some of these freeholders, it was further complained, "were their menial servants in livery." The Popish gentlemen had also, it was alleged, menaced some of the electors, "even to the destruction of their families, if they did not vote as they would have them; and by appearing on the field[5] well mounted, well armed, and in red coats, with several of their emissaries throughout the field, managing and seducing freeholders," had influenced the election against the candidate who petitioned, and in favour of the candidate who had been returned[6].

[1] *H. of C. Journals*, IX. 316.
[2] *H. of C. Journals*, IX. 323.
[3] *H. of C. Journals*, IX. 1031.
[4] *Parl. Reg.*, IX. 391.
[5] The Irish term for the scene of the election.
[6] *H. of C. Journals*, II. 745.

Papists influencing Elections.

The committee of privileges and elections, after hearing a petition from the city of Dublin, arising out of the general election of 1713, reported to the House that "a great number of persons armed with swords and clubs, among whom were many Papists and others unqualified to vote," created a riot at the election[1]. But in these cases the complaints were not that the Papists voted or attempted to vote, but that they sought to influence elections. At this time electors were not liable to the oath of supremacy, and the Act excluding Papists by name did not come into operation until 1727. As late as 1746 a clause was introduced into an election bill which became law, to prevent Popish agents or receivers of rent from influencing elections or intermeddling in them[2].

Papists attempt to poll.

So far as I have been able to trace the first petitions to the House to invalidate returns because Papists had polled were in 1761. In that year there was a petition from Mayo, in which it was complained that a considerable number of persons whose votes were received by the sheriff for the members against whose return the petition was lodged were notorious Papists; that many were married to Popish wives; and that "several others admitted that they were Papists, but pretended that they had conformed to the Protestant religion[3]." From Tipperary there was also a petition in the same year in which similar allegations were made[4]. But Papists seem but infrequently to have succeeded in polling at county elections; while in the borough elections their opportunities for evading the laws were even fewer than at those in the counties. In the freeman and corporation boroughs local by-laws[5] and at least one enactment[6] applicable to all boroughs and dating back to 1692, ruled out Roman Catholics; while the resolutions of the House and the Acts of 1703, 1715, and 1727, all equally applicable to boroughs and counties, excluded them from the inhabitant householder and manor boroughs. Local usage and local by-laws, in fact, so securely safeguarded the Protestant interest from the Revolution to the Reform Act of 1832, that even after Roman Catholics were enfranchised by the Act of 1793, which specifically abrogated these local by-laws, and repealed the legislation which had hitherto buttressed them, in only two or three at

[1] *H. of C. Journals*, II. 766.
[2] *H. of C. Journals*, IV. 479, 489, 508.
[3] *H. of C. Journals*, VII. 19.
[4] *H. of C. Journals*, VII. 71.
[5] Cf. *Council Book of Youghal*, 475; D'Alton, *Hist. of Drogheda*, I. 188.
[6] 4 William and Mary, c. 11.

most of the Irish boroughs were Roman Catholics permitted to exercise the Parliamentary franchise.

A Petition against the Return of a Papist.

Roman Catholics may be said never to have sought election to the House of Commons in the eighteenth century. The only case recorded in the Journals that I have discovered, in which it was sought to disqualify a member on the ground that he was a Papist, was in Tipperary in 1761. Sir Thomas Maude then filed a petition against the return of Mr Thomas Matthew, and in his petition set forth "that some months before the election in May, 1761, he had intimated to Mr Matthew that, as he had professed the Popish religion many years after he was of the age of twelve, and had not conformed to the Protestant religion, or educated his children as required by the Act of Parliament made in this kingdom, the petitioner would object to him as thereby incapable to be one of the representatives of the said county in Parliament[1]." The sheriff had returned Mr Henry Prettie, as one of the knights of the shire; and for the second seat had bracketed Matthew and Maude in a double return[2]. Each of the candidates so bracketed filed a petition against the other. Mr Matthew's petition against Sir Thomas Maude was withdrawn; so that there was no report from the committee of privileges and elections as to the validity of the objection.

Impossibility of Papists entering the House.

The obstacles in the way of Catholic freeholders polling were great, but the obstacles in the way of Catholics who should seek election to the House of Commons were infinitely greater, and an attempt on the part of a Roman Catholic to push his way into the House could result only in failure, failure that must have entailed at least all the expenses of a controverted election. While the Roman Catholics were disfranchised such an attempt was not worth making even as part of a propaganda for Catholic enfranchisement. After re-enfranchisement, and especially after the Union, the position was different, as was demonstrated by O'Connell's election for Clare. But excepting the Tipperary case of 1761, which had in it none of the elements which make O'Connell's election so memorable, the Journals record no attempt of Roman Catholics between the Revolution and the Union to put themselves forward as candidates, and so contest their exclusion from the House of Commons.

Election Committee Reports.

The reports of Irish election committees in the Journals, like those in the Journals of the English House of Commons, throw

[1] *H. of C. Journals*, VII. 71.

[2] *Official List*, pt. II. 667.

much light on social life. The English reports begin a century earlier than the Irish, and they also throw more light on town life; because most of the Irish boroughs were so tightly held by patrons that there were comparatively few petitions against borough returns, and usually only when the petitions were from the inhabitant householder boroughs did the evidence touch upon social conditions. But what the Irish reports lack as regards the social conditions of town life is compensated for by the abundant light which they throw on social and religious life in rural Ireland in the century during which Roman Catholics were excluded from the franchise, and were labouring under many other legal disqualifications. These aspects of Irish life are brought out most fully in the reports of election committees in the numerous cases in which the returns were petitioned against because Protestants married to Popish wives had been permitted to vote. Protestants so married, unless their wives had conformed, were subject to all the civil disabilities thrown by law on Papists.

Men with Papist Wives.

Disabilities of Protestants who had married Papists dated much earlier than the exclusion of Papists from the Parliamentary franchise and from all part in the municipal government of Irish towns. During the Cromwellian settlement of Ireland, men who had married Papist wives were incapable of holding any office under the Commonwealth; and in 1652, when the plan of paying the Cromwellian soldiers their arrears in land was proposed, it was suggested that there should be a law that any officers or soldiers marrying Irishwomen should lose their commands, forfeit their arrears, and be made incapable of inheriting lands in Ireland. No such provision was, however, introduced into the Act. A more effectual plan was adopted, by ordering the women to be transplanted together with all their kindred to Connaught[1]. Similar disabilities to those proposed in 1652 were imposed on Protestants married to Papists soon after the Revolution, when the Irish Parliament was enacting the first of the laws against Roman Catholics. In 1697, the year which witnessed the exclusion of Papists from the franchise by resolutions of the House, a statute was passed in which it was enacted that if a man married a Popish maiden or woman, he should be deemed to all intents and purposes a Papist or a Popish recusant, and should for ever be disabled to sit in either House of Parliament, or hold civil or military office or employment whatever, unless his wife conformed to the Pro-

[1] Prendergast, *The Cromwellian Settlement of Ireland*, 261, 2nd Edition.

testant religion. By this Act there was originated the certificate of conformity to the Protestant religion, which in subsequent years figured so frequently at county elections, and in the hearings of disputed election cases before the committees of privileges and elections. To free himself from the disabilities of the Act of 1697, a man had to prove that within a year after his marriage his wife had conformed to the Protestant religion. The Act provided that the certificate of conformity should be under the hand and seal of the bishop of the diocese, or the archbishop of the province, or the Chancellor of Ireland; that it should set forth that his wife had renounced the Popish religion and become a Protestant, and that it should be enrolled in the Court of Chancery[1].

Their Disfranchisement from 1727.

This Act of 1697 disabled Protestants married to Papist wives only from sitting in Parliament and from civil and military office. It did not affect the Parliamentary franchise. But after the Act of 1727 completely disfranchising the Papists and depriving them of any opportunities of taking oaths in order to qualify, Protestants married to Papist wives were grouped under the disabilities laws with Papists; and from the general election of 1727 until 1791 cases frequently came before election committees in which the right of men to vote turned on proof of the conversion of their wives to the Protestant religion. Even earlier than 1727 occasional instances can be discovered in the records in the Journals of men being objected to as voters because they were alleged to be married to Papist wives. This objection was raised against two freeholders at the Westmeath election in 1723[2]. After the general election of 1727, when several controverted elections were likely to turn on the votes of Protestants married to Papists, the House of Commons adopted a resolution for the guidance of its election committees, in which it was declared that "a Protestant married to a Popish wife since the first day of January, 1697, who hath not within one year after such marriage become a Protestant, hath not a right to vote at any election of a member to serve in Parliament[3]."

Conforming of Papist Wives.

During the next sixty years election committees spent much time in hearing evidence as to whether the wives of men who had polled at elections had conformed to the Protestant religion; whether they had conformed within a year after their marriage; and whether, after having once conformed, they had lapsed into their old faith. The date of the conformity of a freeholder's wife, or the wife of a

[1] 9 W. III, c. 3. [2] *H. of C. Journals*, III. 342.
[3] *H. of C. Journals*, III. 353, 541.

voter in a manor borough or an inhabitant householder borough, vexed Irish election committees much as English committees were vexed by such questions as whether one or two votes could be polled from a tenement in a burgage borough, or whether a potwalloper was really a potwalloper, enjoying a right to a separate entrance and a fireplace to his own use. Irish election committees were often occupied for days with the examination and cross-examination by counsel of witnesses brought from remote parts of the country to swear that the wife of an elector was a Papist, and with the examination and cross-examination of other witnesses who had been brought to Dublin to support the vote by swearing that the woman had conformed, and was regarded by her neighbours as of the Protestant religion.

**Domestic Details in Evidence.**

Usually when a vote was challenged the evidence was that since marriage the woman had been seen at mass; that she had been seen to cross herself *in nomine Patris et Filii*; or that her relatives were Papists; or that, while her husband had attended the services of the Established Church, she had never been seen there[1]. Not infrequently, as was the case in the first controverted election from county Clare after the Act of 1727, the Protestant vicar was summoned to Dublin as a witness. In the Clare case in 1727 the Rev. Marcus Paterson was called to give evidence to invalidate the vote of John Lyons, who had been objected to because he was married to a Papist wife. Mr Paterson's testimony is typical of much of the evidence in these peculiarly Irish election cases. "The Rev. Marcus Paterson, sworn and examined," reads the minute in the Journals[2], "said he knew John Lyons. That his wife for twenty-one years was a reputed Papist. She never went to church to his knowledge. Never heard she was a Protestant, until the election. He christened some of her children, and at the same time met the Popish priest going into her room, where she lay, to purify her; which he heard the priest say was his business in the room." A clergyman was sometimes called to support votes which had been challenged. His evidence then usually took the form of statements that he had seen the voter and his wife at church; that he had christened their children; and that he looked upon the family as Protestant. Occasionally a clergyman who was thus supporting a vote would add that he had seen the voter's family at communion, "but not as often as he had wished[3]."

[1] Cf. *H. of C. Journals*, III. 537, 539. [2] *H. of C. Journals*, III. 539.
[3] Cf. *H. of C. Journals*, V. 277.

Family Dissensions.

The innermost details of family life were laid bare when these votes were in dispute. Christenings, marriages, and wakes, on their religious and social sides, all these events in life were gone into before the election committees; while family histories were scrutinised for three generations back, and everything laid bare to make or unmake a vote[1]. A woman's sisters and brothers would appear to bear testimony against her[2]; and family conflicts, due to intermarriages, were exposed, when witnesses testified of appeals by Protestant husbands of Papist wives to their social superiors to use their influence to bring about conformity, or when fathers related the efforts they had made to induce a son's wife to conform, and secure for her husband the certificate from the bishop necessary to prevent his disqualification as a voter. The laws of hospitality were broken, and a guest would not hesitate to divulge before an election committee the confidences of his host as to his wife's religion[3]. Occasionally a man who was living with a Papist woman would not admit his marriage. Then the burden of proving the marriage was thrown on the petitioner who had objected to his vote[4].

The Hard Lot of the Challenged Voter.

In England, so long as the old representative system survived, the home life of voters in burgage and potwalloper boroughs was often laid bare before election committees. Even to-day domestic arrangements and details are forthcoming in the registration courts, particularly when claims for lodgers' votes are contested. But never in the history of representation in either England or Ireland has a voter been liable to such exposures of his home life, and to such inquiry into his antecedents and the antecedents of his family, as was the Protestant freeholder or inhabitant householder, married to a Roman Catholic wife, who sought to exercise the Parliamentary franchise in Ireland between 1727 and 1793. It is doubtful whether there exist any fuller and more authentic sources of knowledge as to the dividing line between Protestants and Roman Catholics in the eighteenth century in Ireland than the reports from the election committees in the Journals of the Irish House of Commons for the period when the Roman Catholics were excluded from the franchise, and when, to quote again from Sir John Blaquière's letter of 1775, "the allegiance of the Papists added nothing to the strength of the Government in Ireland," for "the Catholic interest could command neither speech nor vote." The penal code brought

[1] Cf. *H. of C. Journals*, III. 539
[2] Cf. *H. of C. Journals*, IV. 130.
[3] Cf. *H. of C. Journals*, IV. 130.
[4] Cf. *H. of C. Journals*, V. 303.

about this division. The election committee reports tell how the penal code worked. They depict what it meant to a man to be on the wrong side of the dividing line; and to no man did it mean more than to a Protestant who had married a Papist. "He was stigmatised as a constructive Papist, a more odious sort of Papist than one who was a Roman Catholic by birth, education, profession, and principle[1]."

Certificates of Conformity.

From the election committee reports it is also possible to ascertain something of the additional machinery of elections rendered necessary by the exclusion of the Roman Catholics. Most of it was applicable to voters married to Papist wives. When challenged a man's title to vote hinged on proof that his wife had conformed; and after 1746 on proof that he had been married by a Protestant clergyman[2]. A certificate as to a wife's conformity had to be produced to the returning-officer.

In 1762, when a controverted election from Mullingar turned on the validity of votes of Protestants married to Papists, one of the certificates signed by the Bishop of Meath was put in as evidence. "We do hereby certify," it reads, "that Catherine Reeves, now an inhabitant of the county of Westmeath, hath renounced the errors of the Church of Rome, and that she was by our order received into the communion of the Church on the 16th day of July, being the Lord's day, 1738, in the Parish of Castle Pollard; and that the said Catherine is a Protestant, and does conform to the Church of Ireland as by law established[3]." Even when in possession of a certificate as to his wife's conformity, an elector might be confronted at the poll with the objection that his wife had been seen at mass subsequent to her conformity. Until 1743 a Protestant married to a Papist, in the event of his wife failing to conform within the required time, was for ever disfranchised. From 1743 he was permitted to vote after the death of his wife.

Oaths for Converts.

Converts from the Papist to the Protestant religion, if otherwise qualified, could exercise the Parliamentary franchise. From 1745, a convert, before polling, might be called upon to make a declaration on oath that he was educated of the Popish religion, but had conformed to the Church of Ireland, and had not since his conformity married a Popish wife[4]. In 1753 there was an enactment which provided that these converts must have conformed six months

[1] "Old Election Days in Ireland," *Cornhill Magazine*, XII. 166.
[2] *H. of C. Journals*, VI. 193.
[3] *H. of C. Journals*, VII. 122.
[4] 19 Geo. II, c. 11.

before the election at which they were offering to vote[1]; and in 1755 the committee of privileges and elections, after hearing a controverted election from Wexford, resolved, and the House adopted the resolution, that no person converted from the Popish to the Protestant religion had a right to vote, unless such person "shall before such election, have enrolled a certificate of his conformity, and have received the sacrament, and have taken, made and subscribed the oaths and declaration appointed by the several statutes made in this kingdom to prevent the further growth of Popery[2]."

Attitude of the Roman Catholics towards Elections.

All the official records and the literature covering the exclusion period that I have been able to find warrant the statement that the Roman Catholics by birth, education, profession, and principle, generally stood aloof from elections; and certainly it was the votes of Protestants married to Papists, and the disputes and contentions arising from these votes, which created most of the work which the laws excluding Roman Catholics threw upon the committees of privileges and elections up to 1771[3] and afterwards on the Irish Grenville Committees.

[1] Cf. *H. of C. Journals*, v. 206. [2] *H. of C. Journals*, v. 280.
[3] 11 Geo. III, c. 12.

# CHAPTER XLIII.

## CATHOLIC ENFRANCHISEMENT.

An Agitation for Reform.

THE enfranchisement of the Catholics in 1793 was the only outcome of an agitation for a reform of the Irish representative system which was maintained in and out of Parliament from 1782 to 1797, from the repeal of Poynings' law to the eve of the Union. The agitation for electoral reform also was only part of an agitation for constitutional reform, a movement which has been traced back to the contests over the money bill in the House of Commons in 1753.

Charlemont's Sketch of the Movement.

Lord Charlemont dates back to 1753 the origin of the movement which brought about successively the Octennial Act of 1768, the repeal of Poynings' law in 1782, and a partial reform of the representative system in 1793. "During the administration of the Duke of Dorset," writes Charlemont, in reviewing Irish political agitations from 1753 to 1793, "a formidable party, with Mr Henry Boyle, then the Speaker, at their head, violently and sometimes successfully opposed Government, in appearance upon public and patriotic grounds, but really and in fact from the private motive of keeping out of the hands of Stone, the never-to-be-forgotten political primate, and of the Ponsonby family, a power of which neither party was likely to make a profitable or temperate use." In other words, the struggle of 1753 was as to who should undertake for Government. "The struggles of 1753, though certainly without any intention in their promoters," continues Charlemont, "produced an excellent and by me, I confess, an unforeseen effect. By them the people were taught a secret of which they had been hitherto ignorant, that Government might be opposed with success; and as a confidence in the possibility of victory is the best inspirer of courage, a spirit was consequently raised in the

nation hereafter to be emphasised to better purpose. Men were likewise accustomed to turn their thoughts to constitutional subjects, and to reflect upon the difference between political freedom and servitude, a reflection which for many years had been overlooked or wholly absorbed in the mobbish conception of the Whig principle. They were taught to know that Ireland had or ought to have a constitution, and to perceive that there was something more in the character of a Whig than implicit loyalty to King George; a detestation of the Pretender; and a fervent zeal for the Hanoverian succession. In a word, the Irish were taught to think, a lesson which was the first and most necessary step to the acquirement of freedom[1]."

Beginning of the Movement.

"The passing of the Octennial Act and the repeal of Poynings' law had been achieved before there was even a beginning of the movement for a reform of the representative system. In England for a century before the movement for Parliamentary reform became general, there had been agitations in the boroughs for a wider suffrage, and many contests with the municipal oligarchies which had secured to themselves the exclusive right of returning members to the House of Commons. In Ireland there are no traces of similar local movements for wider Parliamentary franchises in the boroughs. Until after the Revolution, seats in the Irish House of Commons were so little prized that where the elections were not by charter in the hands of the municipal corporations, it was not to the interest of anyone to restrict the franchise: and at this time the corporations exercising the right to elect valued it so little that in no Parliament before 1692 were all the Irish boroughs represented.

No Local Movements for Wider Franchises.

After the Revolution, when Parliamentary votes in boroughs were valued, many of the inhabitants were excluded as Papists, and they had consequently little interest in the conditions under which the Protestants in the boroughs exercised the franchise. There were in Ireland few, if any, of the local movements against corporation control of Parliamentary elections which marked the municipal history of England during the seventeenth and eighteenth centuries. The Journals of the Irish House of Commons record no instance of a local contest for a wider Parliamentary franchise, of a movement against a local oligarchy begun at an election and continued before an election committee of the House of Commons. The agitation for Parliamentary

[1] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 5–7.

reform in Ireland, as in England, centred chiefly about borough representation; but it was general in its character from the beginning, and had not been, as in England, long preceded by sporadic local agitations.

Political Agitation spreads from England.

Political thought had been greatly stimulated by the American Revolution—popular political agitation even more in Ireland than in England. It was from England, however, that the impulse came which began the movement for the reform of the representative system. "All constitutional points between the two nations having been at length settled," writes Charlemont, in describing political movement in Ireland in the period immediately following the repeal of Poynings' law, "the people for a time seemed perfectly satisfied, and the calm of content appeared to have succeeded to those tumultuous storms which had for some time past agitated the public mind; when a new matter arose, which was the more likely to renew and to propagate disturbances, as private interest was much more involved in it than it had been in any of the past struggles. A considerable party in the sister nation, at the head of which were many of the most conspicuous, both for birth and character, had for some time past been strenuously struggling for a reform in the representation; and as much had been written with great energy and efficacy upon this important subject, the flame quickly spread itself to this side of the water, where the minds of men were well prepared to receive it, and where undoubtedly every argument in favour of reform might be urged and was accordingly felt with redoubled force[1]."

First Symptoms of the Movement.

In the Irish House of Commons there was a foreshadowing of the agitation for Parliamentary reform in 1782—the session in which Poynings' law was repealed, but while that law was still in force; for under date of July 19th it is recorded that leave was given to Sir Edward Newenham and Mr Crofton "to bring in heads of a bill for the more effectual representation of the people[2]." In this memorable session also there was presented the first petition in favour of Parliamentary reform. It was from the freeholders of Meath, and urged the establishment of a residential qualification for electors in boroughs[3], a qualification long abrogated by usage, and declared non-essential by an Act of Parliament in 1747.

[1] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 110.
[2] *H. of C. Journals*, x. 378.
[3] *H. of C. Journals*, xi. 197.

Volunteer Movement.

About this time the volunteer movement in Ireland had assumed great proportions. It began in 1778, when the French were threatening an invasion of Ireland. "Upon an alarm occasioned by official intelligence that the enemy meditated an attack upon the northern parts of Ireland," wrote Lord Buckinghamshire, then Lord-Lieutenant, in explaining the beginning of the volunteer movement to his friend, Hans Stanley, "the inhabitants of Belfast and Carrickfergus, as Government could not afford them immediately a greater force for their protection than about sixty troopers, armed themselves, and by degrees formed two companies. The spirit diffused itself into many parts of Ireland, and the numbers are becoming considerable." Buckinghamshire wrote this letter in 1779, at a time when he was being censured in England for not suppressing the movement. "Those who arraign this proceeding," he added in his letter to Stanley, "do not consider that without such an undoubtedly illegal force, the camp could not have been formed, or the interior parts of the country must have been abandoned to riot and confusion[1]."

Its Political Phase.

In little over a year forty-two thousand volunteers were enrolled[2]; and about the end of 1781, when the enthusiasm was at its height, the volunteers, especially those recruited in Ulster, began to manifest much interest in the proceedings of Parliament, and in the agitation for the repeal of Poynings' law. In February, 1782, representatives of one hundred and forty-three corps of Ulster volunteers met in convention at Dungannon and passed a resolution declaring that "a claim of any body of men, other than the King, Lords and Commons of Ireland, to make laws to bind this kingdom is unconstitutional, illegal, and a grievance: that the power exercised by the Privy Councils of Great Britain and Ireland under colour or pretence of the law of Poynings, is unconstitutional and a grievance." With this resolution there was also an address of thanks to both Houses of Parliament for their efforts in defence of the constitutional rights of Ireland, which Grattan was at this time championing in the House of Commons[3].

Movement for Reform after 1782.

The reform of the representative system was not agitated at the Dungannon Convention. As yet the question of Parliamentary

[1] Additional MSS. 34523, Folio 242.

[2] Ball, *Legislative Systems of Ireland*, 95.

[3] Ball, *Legislative Systems of Ireland*, 108, 112.

reform had received little attention in Ireland. But after Poynings' law had been repealed, "the more forward and far-seeing of the patriots at once perceived that, unless the legislature was pure as well as free, its independence could not endure." The first step of the victors of 1782 was an endeavour to purify the representation, and the next to obtain Catholic emancipation[1]. "We moved," said Grattan, in retrospecting the agitation from 1783 to 1793, in his address to the citizens of Dublin on retiring from Parliament in 1797, "a reform of Parliament which should give a constitution to the people, and then Catholic emancipation, which should give a people to the constitution[2]."

Volunteers in the 1783 Movement.

How the volunteer movement, after the repeal of Poynings' law in 1782, was diverted into the new movement for the reform of the representation has been told by Charlemont. "From the nature of the volunteer institution," he writes, "it was not to be expected that it could persist for ever, and even now (1783) it seemed to be on the decline. They (the Parliamentary reformers) thought therefore that the present moment was to be seized, and that whilst yet in strength the volunteers were to be brought forward. With this end in view, a meeting of delegates from forty-five corps of the province of Ulster was summoned, and met at Lisburne on the 1st of July, 1783[3]."

Reasons for their Participation.

Every student of Irish history must have met with frequent cautions as to the reliance to be placed on Sir Jonah Barrington's narrative of the course of political events at this time. But Barrington may safely be quoted as to the spirit in which, in 1783, the Ulster volunteers entered into the new agitation for Parliamentary reform. "They caught," Barrington writes, "the strong features of their case and their constitution. They knew they had contributed by their arms and by their energy to the common cause of their country. They felt they had been victorious. They listened attentively to their officers, who, more learned than the soldiers, endeavoured to adapt their explanations to the strong coarse minds which they sought to enlighten. They instructed them as to existing conditions and to future possibilities, and thus endeavoured to teach to those whom they commanded not only how to act, but why that principle of action was

[1] Lord Cloncurry, *Personal Recollections*, 26.

[2] *Address to My Fellow-Citizens of Dublin*, 1797, 39.

[3] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 112. Cf. MacNeven, *Hist. of Volunteers*, 100; *Beresford Correspondence*, II. 119.

demanded by their country. At this time the visionary and impracticable theories of more modern days had no place among the objects of the armed societies of Ireland: but the naturally shrewd and intelligent capacities of the Irish people were easily convinced that without some constitutional reform in the mode of electing the Commons House of Parliament, they could have no adequate security for permanent independence. They learned that the independence of the constitution, unless protected by a free Parliament, never could be secured; that the enemy might attempt to regain her position, and that the battle would then be fought again under multiplied disadvantages[1]."

Dungannon Convention.

At the Lisburne meeting a general convention of volunteer delegates from the province of Ulster to deal with the subject of a more equal representation of the people was summoned to assemble at Dungannon on the 8th of September, 1783, and a committee was appointed to take the preparatory steps for the convention, and for collecting "the best authorities and information on the subject of Parliamentary reform[2]." At the Dungannon Convention, the second political convention held there in connection with the volunteer movement in Ulster, two hundred and sixty-nine associated bodies were represented. Its outcome was a call for a national convention in Dublin in November.

The Call for the Dublin Convention.

Even as early as 1780, before the volunteer movement had assumed large proportions or political aims, Buckinghamshire, the Lord-Lieutenant, had become alarmed at the attachment of the volunteers to American principles[3]. That this alarm was not groundless is shown by the call issued by the Dungannon Convention for the National Convention in Dublin. It was addressed to the volunteer armies of the provinces of Munster, Leinster, and Connaught, and set forth that "the transcendant events which our united efforts have produced, present an eminent instance of the protecting hand of heaven, whilst the progressive virtue and general union of the people naturally prompt them to revive the spirit of an unrivalled constitution, and to vindicate the inherent rights of men." "The most important work," continues the call, "yet remains, which neglected, our past attainments are transitory, unsubstantial and insecure—an exten-

[1] Barrington, *Rise and Fall of the Irish Nation*, 269.

[2] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 112.

[3] Cf. Buckinghamshire to Sir Richard Heron, Sept. 10th, 1780, Add. MSS. 34523, Folio 296.

life or a term of years of twenty-one or upwards, be rendered incapable of sitting in Parliament; (5) That any member of the House of Commons holding a pension, directly or indirectly, for a life or lives, or for a term of twenty-one years, or upwards, shall vacate his seat, but be capable of re-election; (6) That any member of the House of Commons accepting a place shall vacate his seat, but be capable of re-election; (7) That the sheriff of every county shall appoint a deputy to take the poll in every barony on the same day: (8) That an additional oath to secure the purity of election is necessary to be taken by all members of Parliament; and (9) That all decayed, mean and depopulated cities, towns, boroughs, or manors be enabled, by an extension of their franchises to the adjacent parish or parishes, to return members to serve in Parliament agreeably to the principles of the constitution[1].

The House of Commons and the Convention.

From the Rotunda Convention on the 29th of November, 1783, Flood went to the House of Commons to ask leave to introduce a bill, embodying the reforms set out in the foregoing resolutions. He was attended by his colleagues of the Convention who were members of the House, "in the uniforms and arms which they wore as delegates to the Convention"; an appearance "which naturally alarmed many men, who while they earnestly desired the independence of their country, wished to seek it through the use of those constitutional means, whereby the recent victory (the repeal of Poynings' law) had been gained[2]." The House of Commons negatived Flood's motion for leave to introduce a bill, and expressed its resentment at what it regarded as dictation from the Rotunda Convention by an address to the Crown which was intended to close the door against all proposals for Parliamentary reform.

Rejection of the Motion for Reform.

The spirit in which the House for the first time debated the reform of the representation is described in Charlemont's account of the Rotunda Convention, and of the subsequent stages of the agitation which had been begun at the meeting of volunteer delegates at Lisburne in July. Charlemont is admittedly a partisan reporter. He was a pioneer reformer: and his position in the Irish movement is not unlike that of the Duke of Richmond in the movement for reform in England. He was a borough owner, but was willing, "with exultation and delight," to sacrifice to the cause

[1] Newport, *State of Borough Representation in Ireland from 1793 to 1800*, 33, 34.

[2] Cloncurry, *Personal Recollections*, 27.

of reform "that which some men esteem their property[1]"; and until as late as 1793 was sanguine of the success of the movement which he was so largely instrumental in launching[2]. "The debate on Flood's bill," he writes, "was carried on with a violence and want of temper which would have disgraced the assembly I had just left"—the Rotunda Convention, at which his work as chairman had been so trying. "The whole faction of borough mongers," he continues, "seized the good ground which had been given them by the imprudence of the Convention; and, uniting themselves with the Government, opposed the admission of a bill which had taken its rise in an assembly termed by them illegal, and which had been brought thither hot from a meeting assuming to itself the deliberative powers of the legislature, and arrogantly hoping to control and overawe. Much illiberal abuse was thrown out against the volunteers....All was confusion, scurrility and vociferation. Confiding in their numbers, and sure of pleasing Government, every man was eager to rise and to rail. To hear them vociferate, one would have imagined that they were not afraid; yet an accurate observer would easily have discovered that the contrary was true. Excess of fear sometimes produces a momentary exertion which looks like courage; and every man was loud in proportion to his terror. In vain did Brownlow and the fast friends of reform exert themselves to the utmost. Leave was refused by a great majority —ayes, seventy-seven; noes, one hundred and fifty-nine—the more numerous as it consisted of three classes whom the present emergency had united,—the hirelings of the Court; almost all they who had an interest in boroughs; and many honest but timid men who were, perhaps not without some ground, alarmed at the measures which had lately been pursued by the volunteers, and who really thought the dignity of Parliament and consequently the national security at stake."

A Loyal Address to the Crown.

"This great question being thus disposed of, the victorious party, relying on the strength they had acquired from the causes and motives above-mentioned, and impelled by that impetuosity, that bastard courage which is the child of fear, determined to pursue their victory, and a motion was made 'that it be resolved that it is now become indispensably necessary to declare that this House will maintain its just rights and privileges against all encroachments whatsoever.' Upon this new ground a violent

[1] *Hist. MSS. Comm. 13th Rep.*, App., pt. VIII. 123.

[2] *Hist. MSS. Comm. 13th Rep.*, App., pt. VIII. 215.

debate ensued, and after much altercation the question was put 'that the House do now adjourn,' which having passed in the negative, the question was put 'that the House do agree in the said resolution,' when upon a division, the ayes who went out were one hundred and fifty, the noes who stayed in sixty-eight....And now was brought forward the final manœuvre on which the party most relied; and a motion being made and the question put 'that it be resolved by the Lords Temporal and Spiritual and Commons in Parliament, that an humble address be presented to his Majesty to declare the perfect satisfaction which we feel in the many blessings we enjoy under his Majesty's most auspicious Government, and our present happy constitution, and to acquaint his Majesty that at this time we think it peculiarly incumbent upon us to express our determined resolution to support the same inviolate with our lives and fortunes,' it was carried in the affirmative without a division, our friends not choosing to divide, as the lateness of the night had impaired their numbers, a misfortune to which opposition is always liable, and therefore taking advantage of the ambiguous terms in which the resolution was expressed, they chose to content themselves with a simple negative. Nothing was now wanting to complete the measure but the concurrence of the other branch of the legislature; and it was therefore ordered 'that Mr Conolly do carry the said resolution to the Lords, and desire their concurrence'; and this order being made without a division, the House at length adjourned[1]." The debate had lasted until after three o'clock on Sunday morning[2].

The Address in the Lords.

Charlemont's narrative dismisses very briefly the proceedings of the House of Lords on the address. "It was debated," he writes, "with a degree of warmth which made it appear that many of their lordships were possessed of boroughs, and the motion for concurrence was carried by a great majority[3]." The principal speech in support of the address was by the Archbishop of Cashel. Earl Charlemont, with Lords Aldborough, Powerscourt, and Mountmorres, spoke strongly in opposition to the address. Lord Powerscourt's speech is remarkable for one of the most outspoken denunciations of Parliamentary corruption to be found in the reported debates in the turbulent period between the beginning of the agitation for the reform of the representation and the end of the Irish Parliament. "It is not unconstitutional," he declared,

[1] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 127–129.

[2] Cf. Plowden, III. 57. [3] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 134.

"to say Parliament is corrupt. No man can deny it. It is too well known that two-thirds of the House of Commons receive the wages of corruption[1]."

A Counter-Address.

The Rotunda Convention met again on the second day after the House of Commons had negatived Flood's motion. As a counter-move to the address from Parliament the Convention adopted an address to the Crown, praying that the movement that the Convention had inaugurated "to have certain manifest perversions of the Parliamentary representation of this kingdom remedied by the Legislature in some reasonable degree, might not be imputed to any spirit of innovation." The Convention then adjourned *sine die*[2].

Agitation Renewed in 1784.

The action of the House of Commons on Flood's bill on November 29th, 1783, by no means disheartened the Parliamentary reformers. In the next session of Parliament thirteen petitions praying for reform were presented to the House of Commons. Most of them were from the freeholders of counties, and nearly all were framed on the resolutions which the Rotunda Convention had adopted. In none of them was there any plea for the enfranchisement of the Catholics; and during the session of 1784 there was little popular movement on behalf of Catholic enfranchisement. Debates on petitions were not the rule in the Irish House; and after petitions had been presented, there was only a formal order "that the said petitions lie upon the table for the perusal of members." All the petitions were presented in March[3], in view of a debate in the House on a bill similar to that which Flood had asked leave to introduce in the session of 1783.

Ministerial Anticipations.

At the time that Flood's first motion was before the House the Coalition Ministry was in office in England. But on the 19th of December, 1783, Pitt had become Prime Minister; and on the 11th of February, 1784, the Duke of Rutland had succeeded the Earl of Northington as Lord-Lieutenant. Within a month after his appointment the Duke of Rutland wrote to Lord Sydney, congratulating himself on the prospect of a quiet and well-supported administration. "The protecting duties and the reform of Parliament," he wrote, "are the two great popular questions to be brought forward in the course of this session; and I flatter myself the Cabinet will agree with me that they are to be met by a firm and decided opposition. With respect to the reform of Parliament,

[1] *Parl. Reg.*, III. 55. [2] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 132.
[3] Cf. *H. of C. Journals*, XI. 197–219.

on the suggestion of Mr Brownlow a meeting was held on the 7th (March) at Lord Charlemont's to take the subject into consideration. It was attended by about forty persons, when it was agreed that a bill should be brought in, framed on the plan of the National Convention; but that all allusion to that assembly should be studiously avoided in the introduction of the business[1]."

Flood's Second Effort.

Flood made his second motion for leave to introduce a reform bill on the 13th of March. This time leave to introduce was given, because the Duke of Rutland thought that he could defeat the bill by a larger majority on second reading than he could have commanded for a refusal of permission[2]. At second reading on the 20th of March the bill was negatived by one hundred and fifty-nine votes to eighty-five[3].

Convention of 1784.

After this second debate in the House of Commons on the reform for which Flood and Charlemont were working, the movement for the enfranchisement of the Catholics became much more active. In June there was a meeting of citizens of Dublin, at which resolutions were passed affirming that the constitution of Parliament was unbearable; that the people must have a share in the representation; and that the Catholics must have the franchise[4]; and as a result of this meeting another national convention was held in Dublin in October. It was to bring about the election of delegates to this meeting that sheriffs of counties were asked to summon the freeholders, and to use much the same methods and machinery for the election of delegates as were used by them for elections for knights of the shire. The Government warned the sheriffs against taking part in the election of delegates; prosecuted the high sheriff of the county of Dublin for convening a meeting of the freeholders to choose and instruct delegates; prosecuted magistrates in the counties of Leitrim and Roscommon, who took part in the election of delegates there; and also prosecuted the printers of such newspapers as published resolutions in connection with the coming convention[5]. The scheme of the conveners of the October meeting was that there should be as many delegates as there were members in the House of Commons. But instead of three hundred, only a handful attended; and the Convention of 1784 was much less successful than the Convention in the Rotunda,

[1] Duke of Rutland to Lord Sydney, March 10th, 1784, *Hist. MSS. Comm. 14th Rep.*, App., pt. I. 80.

[2] Cf. Froude, II. 398.

[3] *H. of C. Journals*, XI. 238.

[4] Cf. Plowden, III. 89.

[5] Cf. Plowden, III. 98, 99.

which had preceded Flood's first motion in the House of Commons on behalf of Parliamentary reform.

Pitt and the Irish Reformers.

But while the Convention of the Parliamentary reformers who were prepared to extend the franchise to the Catholics was a failure, during the ensuing twelve months the agitation for reform gave much concern to Rutland and Pitt, especially to Pitt, who, before he became Prime Minister, had brought forward two motions in the House of Commons for reform of the representation in England, and at the time that the Irish reformers were thus active in and out of Parliament, stood pledged to bring the question again before Parliament, this time as Prime Minister.

An Opinion against Reform.

Between the Dublin city meeting, at which Catholic enfranchisement was advocated, and the abortive convention of October, Rutland was in correspondence on the subject with Lord Sydney, Secretary of State for the Southern Department which then had charge of Irish affairs; and a letter from Sydney to Rutland, dated September 26th, 1784, shows that Sydney had been canvassing the question of reform with the Irish Primate. "I find," he writes, "I have omitted to mention one opinion of the Primate, namely that any giving way upon the subject of Parliamentary reform would be ruinous to the country. It would irritate the Roman Catholics, if they were not included, which irritation is as much to be avoided as improper concession. I need not add that he looks upon giving them votes as a certain overthrow of the present constitution, civil and religious[1]."

Rutland's View of the Question.

From the Dublin meeting of June, 1784, at which Roman Catholic enfranchisement was advocated, until the eve of the meeting of the Irish Parliament in 1785, Rutland and Pitt were engaged in an official and personal correspondence on the subject of the reform of the representation in Ireland. This correspondence shows that, while the Dublin Convention of 1784 was a failure, from the meeting of the citizens of Dublin on the 7th of June may be dated the time when the demand for Catholic enfranchisement became a disturbing question for the Irish Government. Writing from Dublin Castle to Pitt on the 16th of June, ten days after the call for the Dublin Convention, Rutland urged on Pitt that, if the question of Parliamentary reform in England, the question which Pitt himself was at this time agitating, should be carried, its success would tend greatly to increase the difficulties of

[1] *Hist. MSS. Comm. 14th Rep.*, App., pt. 1. 140.

the Irish administration, and he assured the Prime Minister that he did not see how the question could be evaded in Ireland.

Danger of Catholic Enfranchisement.

"In England," continued Rutland, "it is a delicate question; but in this country it is difficult and dangerous in the last degree. The views of the Catholics render it extremely hazardous; and though Lord Charlemont and Mr Flood seem to exclude them from their ideas of reform, yet in some late meetings and in one particularly, held lately in this city, the point ran entirely on their admission to vote, which was carried with a single negative[1]. Your proposition of a certain proportionable addition of county members would be the least exceptionable, and might not perhaps materially interfere with the system of Parliament in this country, which, though it must be confessed does not bear the smallest resemblance to representation, I do not see how quiet and good government could exist under any more popular mode. Could the volunteers be induced to disband, and return their arms to Government, provided such a temperate reform as you propose should take place, it might perhaps be fitting to concede something to their wishes, and, on moderate terms, the leading interests in Parliament might be prevailed upon to acquiesce[2]." With the volunteers, "an armed force independent of and unconnected with the State," overawing the Legislature by their wild and visionary schemes, Rutland took a despairing view of Ireland. "Were I to indulge in a distant speculation," he added in his letter of June 16th, "I should say that without an union, Ireland will not be connected with Great Britain in twenty years longer[3]."

Charlemont's Opposition.

Six weeks later Rutland reported to Pitt an incident which he was hopeful would not be without effect in discouraging the movements for Catholic enfranchisement and for Parliamentary reform. "Lord Charlemont, the reviewing general of the volunteers," he wrote on the 24th of July, "has, in answer to one of their addresses in the north, given a decided opinion of his disapprobation of admitting Roman Catholics to any right of voting, which opinion directly tends to divide the volunteers into two classes, and of course to crumble both[4]."

[1] Resolved therefore with one dissenting voice, that to extend the rights of suffrage to our Roman Catholic brethren, still preserving in its fullest extent the present Protestant government of this country, would be a measure fraught with the happiest consequences, and would be highly conducive to civil liberty. Plowden, III. 90. [2] *Pitt and Rutland Correspondence*, 15–17.

[3] *Pitt and Rutland Correspondence*, 17.

[4] *Pitt and Rutland Correspondence*, 23.

From October, 1784, to January, 1785, in the correspondence between Pitt and Rutland, Parliamentary reform was interwoven with the commercial policy of England towards Ireland. Both subjects were discussed in the same letters, and these letters from Pitt put beyond all question the sincerity of his position at this time on the question of Parliamentary reform in England, and his conviction that it should be possible to carry some measure of Parliamentary reform for Ireland. He desired that the Rutland administration should adopt a policy towards the movement led by Charlemont, Flood, and Brownlow, which, while discountenancing "wild and unconstitutional attempts which strike at the root of all authority," would "give real efficacy and popularity to Government, by acceding to a prudent and temperate reform of Parliament which may guard against or gradually cure the real defects and mischief, may show a sufficient regard to the interests and even prejudices of individuals who are concerned, and may unite the Protestant interest in excluding the Catholics from any share in the representation or government of the country[1]." The letter from which this is quoted was written when the Government was working to frustrate the meeting of the convention which had been called for October; and Pitt urged on Rutland that, in connection with this convention, it was "essential not by any means to pledge the Government against the possibility of adopting any reform, however modified[2]." In a postscript Pitt also suggested to Rutland that he should, without committing himself, gain some authentic knowledge "of the extent of the numbers who are really zealous for reform and of the ideas which would content them." He further recommended that in these inquiries Rutland should go beyond the men with whom he was most in contact at the Castle: for these people "must be those who are most interested against any plan of reform—that is to say those who have the greatest share of present Parliamentary interest."

Pitt favours Reform.

More than any other letter in the correspondence this Downing Street postscript to the Putney Heath letter of October 7th, 1784, brings out the sincerity with which, up to January, 1785, Pitt was attached to reform, the advocacy of which had brought him so much to the front in English politics. "By all I hear accidentally," he continued, after suggesting to Rutland the lines of his

Pitt's Sincerity.

[1] Pitt to Rutland, October 7th, 1784, *Pitt and Rutland Correspondence*, 40.

[2] *Pitt and Rutland Correspondence*, 41.

inquiry among the Irish reformers, "the Protestant reformers are alarmed at the pretensions of the Catholics, and for that very reason, would stop very short of the extreme speculative notions of universal suffrage. Could there be any way of your confidentially sounding Lord Charlemont without any danger from the consequences? I am sure you will forgive the anxiety which impels me to trouble you with all these suggestions. I am aware that you may have seen local difficulties which may discourage you in this whole subject of reform, and make you doubt the possibility of applying our principles to Ireland. But let me beseech you to recollect that both your character and mine for consistency are at stake, unless there are unanswerable proofs that the case of Ireland and England is different; and to recollect also that, however it is our duty to oppose the most determined spirit and firmness to ill-grounded clamour or factious pretensions, it is a duty equally indispensable to take care not to struggle but in a right cause[1]."

**Rutland's Dilemma.**

Rutland's answer to Pitt's letter, from an Irish point of view, is the most significant in the entire correspondence; for it embodies the objections which were at the foundation of all subsequent government opposition to the reform of the representative system in Ireland. "The question of a Parliamentary reform, about which you appear more solicitous than I could have expected," wrote Rutland, from Phœnix Park, November 14th, 1784, "is indeed of a very delicate nature. Every point of view in which it presents itself opens new scenes of difficulty and danger and, in short, leaves me but one opinion, that Government cannot embark in the measure without the risk of absolute ruin. To inquire of the advocates of reform what may be the extent of their wishes, or with what particular mode they will be contented, would be a fruitless investigation; for I am satisfied they will make up their minds to nothing. On my first arrival I accidentally indeed discovered from Lord Charlemont that the specific plan which you brought forward as your scheme in the last Parliament[2] would answer no beneficial end in this country, but in general the extension of the elective franchise seems to be the favourite plan. But how can you upon principle increase the right of voting to some

[1] *Pitt and Rutland Correspondence*, 42, 43.

[2] Pitt's resolutions of May 7th, 1783, for the prevention of bribery and expense at elections; for throwing notoriously corrupt boroughs into counties; and for additional representatives for the counties and the metropolis. *Parl. Hist.*, xxiii. 834.

without extending the rule? If you admit Catholics to vote your next Parliament will be composed of Papists; and should you reform only so as to increase the number of Protestant voters to the exclusion of the Catholics, I am convinced the latter would run into rebellion. Your character, your credit, your consistency cannot be impeached by avoiding to make an option of these difficulties; for the idea of a Parliamentary reformation had not entered the breast of any Irishman at the time when you stated your plan to the last House of Commons, and indeed the local circumstances of the two countries place them on such different premises, that you cannot put them together in an argument[1]."

His Policy.

"In short," wrote Rutland, in proposing to Pitt the policy which he recommended should be pursued towards the reformers in the Irish House of Commons, "it would in my opinion be little less than lunacy for Government here to involve itself with a question of so dangerous a tendency. Leave it to be combated by its proper champions—by those who are on both sides interested in its fate. Let Government look quietly on, and by poising the balance, gain strength by the dispute; and let us not from principle of extravagant knight errantry volunteer ourselves into a dilemma where the choice can only be as to the mode of producing confusion, and not the substance. These are my unalterable sentiments on this subject, so far as it relates to Ireland[2]."

Pitt deems Reform inevitable.

Pitt did not fully realize the methods by which the Irish House of Commons had been managed by lord-lieutenants and their secretaries since the days of Townshend's administration, when the undertakers had disappeared. Rutland's reasoning failed to convince him that Parliamentary reform in Ireland was impracticable. Writing from Putney Heath on the 4th of December, 1784, Pitt assured Rutland that he was still confident, after considering all that Rutland had stated, that Parliamentary reform must sooner or later be carried in both countries. "If it is well done," he added, "the sooner the better." "For God's sake," he continued, "do not persuade yourself in the meantime that the measure properly managed, and separated from every ingredient of faction, which I believe it may, is inconsistent with either the dignity, or tranquillity and facility of government. On the contrary I believe they ultimately depend upon it. And if such a settlement is practicable, it is the only system worth the hazard and trouble

[1] *Hist. MSS. Comm. 14th Rep.*, App., pt. i. 147, 148.

[2] *Hist. MSS. Comm. 14th Rep.*, App., pt. i. 148.

which belongs to every system that can be thought of. I write in great haste, and under a strong impression of these sentiments. You will perceive that this is merely a confidential and personal communication between you and myself, and therefore I need no apology for stating so plainly what is floating in my mind on these subjects[1]." "With regard to Parliamentary reform," wrote Pitt in another letter from Putney Heath on December 14th, "it requires every sort of management in the mode and conduct of it. But the substance of it cannot be finally resisted either with prudence or with credit[2]."

Ireland and Reform in England.

Again on the 11th of January, 1785, after the question of reform in Ireland had been considered by the Cabinet, Pitt wrote to Rutland concerning the decision which had been arrived at. "I trust you will agree," he continued, "that under all the circumstances the line which has been approved of here is the only one which can properly be pursued at present. I am more and more convinced in my own mind every day, some reform will take place in both countries. Whatever is to be involved...it is, I believe, at least certain that if any reform takes place here the tide will be too strong to be withstood in Ireland. It seems therefore the part of common prudence to bear in mind that that event is at least possible, and perhaps not distant, and to be prepared for the circumstances which it may produce[3]."

Pitt's Hope for Reform.

At this time—January, 1785—Pitt had not yet framed the measure for Parliamentary reform in England which, as Prime Minister, he was to submit to the House of Commons in the approaching session. "I do not pretend," he continued in his letter of January 11th to Rutland, after again insisting that it should not be impossible to devise a temperate plan for Ireland, "to be able to judge with certainty what the fate of the question will be here; but I think the great probability is that it will be carried. I will let you know as soon as the proposal is more decided, and communicate to you as early as possible the detail of my plan. Give me credit in the meantime when I assure you that if Ireland adopts anything like the same model, the true interests both of Government and of this country will be safe[4]." This letter was written from Downing Street. On the following day Pitt

[1] *Pitt and Rutland Correspondence*, 48.
[2] *Pitt and Rutland Correspondence*, 49.
[3] *Pitt and Rutland Correspondence*, 69.
[4] *Pitt and Rutland Correspondence*, 72, 73.

addressed Rutland from Putney Heath, from which place his personal communications with the Lord-Lieutenant were usually dated. "I really think," he wrote, "that I see more than ever the chance of effecting a safe and temperate plan, and I think its success as essential to the credit, if not the stability, of the present administration as it is to the good government of the country hereafter." Rutland commanded borough interest in England; Pitt suggested that he should urge his members to support the proposals that Pitt was about to make in the House of Commons. "Forgive my suggesting it," he added, "and if you can do anything in it, I shall be greatly obliged to you. I really have the whole of this subject inexpressibly at heart[1]."

Rutland's Unalterable Hostility.

Rutland, in the early weeks of 1785, was much occupied with the adjustment of the commercial relations of Ireland with Great Britain. He wrote Pitt a long letter on this subject on the 23rd of January, and ended it thus: "I have no time to answer your letter on the subject of reform. Your commands, as far as they relate to England shall be obeyed[2]." But Pitt's letters of January 11th and 12th produced no impression on Rutland; for in writing to Lord Sydney on January 23rd, on the same day as his last letter to Pitt, he told him that as to reform in England he was pledged and would say nothing. "As relating to Ireland," he added, "it is neither more nor less than lunacy[3]." This letter of Rutland's was in reply to one from Sydney, in which, in referring to the approaching meeting of the Cabinet by which Rutland was to be instructed as to his attitude towards the reformers in the Irish House of Commons, he had expressed the wish that Irish Parliamentary reform was "at the devil[4]." Orde, who was secretary to Rutland, and led for the Government in the Irish House of Commons, had gone over to London in December to argue with Pitt against Irish reform. Writing on the 14th of December, 1784, he reported to the Lord-Lieutenant that "Mr Pitt argues fairly about it, as he does about everything; but he is sadly involved and embarrassed[5]"—embarrassed by the part he had taken in the movement for Parliamentary reform in and out of the House of Commons before he became Prime Minister.

[1] *Pitt and Rutland Correspondence*, 78.
[2] *Pitt and Rutland Correspondence*, 167.
[3] *Pitt and Rutland Correspondence*, 167.
[4] *Pitt and Rutland Correspondence*, 160.
[5] *Pitt and Rutland Correspondence*, 159.

Instructions from the Cabinet.

In January, as indicated in Pitt's correspondence with Rutland, the Cabinet had to come to some decision, in view of the probability that, in the approaching session of the Irish Parliament, Flood and his supporters would again introduce a bill for Parliamentary reform. Lord Sydney officially reported to Rutland the decision of the Cabinet on the 11th of January. "I am commanded," he wrote, "to acquaint your grace, that it is thought desirable in the present situation of affairs, that the Government should endeavour to postpone it until after the decision of a similar question in the Parliament of Great Britain. Your grace will doubtless concur in the propriety of this delay. Delay will enable you to see more clearly what kind of reform, if such a measure is to be adopted, would be agreeable to the greatest number, and attended with the least objection from those who have hitherto supported your Government. But you will avoid everything which would tend prematurely to commit the opinion of Government or to give offence to your supporters[1]."

Pitt's Defection from Reform.

Pitt's scheme for Parliamentary reform in England was laid before the House of Commons on the 18th of April, 1785. Then, for the only time from the beginning of the movement until 1831, a general measure for the reform of the representative system was submitted to the House from the Treasury Bench. But between January and April, 1785, Pitt had ceased to be a Parliamentary reformer. In his speech on the 18th of April he dwelt on the importance of a House of Commons which should be "an assembly freely elected, between whom and the mass of the people there was the closest union and the most perfect sympathy[2]." His plan for bringing about such a change was the gradual transference of seventy-two seats from thirty-six decayed boroughs to the counties, a plan which was to be entirely voluntary so far as the Gattons, Droitwiches, and Old Sarums were concerned. Pitt's motion for leave to bring in a bill was rejected, as he doubtless expected and hoped it would be; for neither in the scheme itself, nor in his exposition of it to the House—the last speech which he made on behalf of Parliamentary reform—was there any of the sincerity or enthusiasm which so strongly characterises his official and private correspondence with his intimate friend Rutland between June, 1784, and January, 1785. To indicate the unreal character of Pitt's plan, and the spirit in which it was submitted by ministers to the House of

[1] *Hist. MSS. Comm. 14th. Rep.*, App., pt. i. 161.
[2] *Parl. Hist.*, xxv. 435.

Commons, as well as its apparent and single intention of affording Pitt a means of saving his character for consistency on the question of reform, it is only necessary to add that his motion for leave to introduce a bill was supported by Dundas[1], who at this time was well launched on his long career as Parliamentary manager of Scotland, and who, in the previous session, had opposed Pitt, then a private member, on the question of reform[2].

Rejection of Flood's Reform Bill of 1785.

Flood, Brownlow, and Newenham in the Irish House of Commons obtained leave to bring in their reform bill on the 2nd of March, 1785. The second reading was taken on the 12th of May. I have been unable to discover any correspondence between Pitt and Rutland as to the attitude of the Irish Government towards Flood's bill later than the letter of the 11th of January, counselling Rutland to delay action on the bill until the House of Commons at Westminster had voted on Pitt's motion. But Rutland would stand in need of no further instructions from Downing Street. Pitt's scheme and his speech of the 18th of April would convince him that the Prime Minister was no longer zealous for reform, even in England; and Rutland was now free to act on his own policy, which was to leave Parliamentary reform in Ireland "to be combated by its proper champions, by those who on both sides were interested in its fate." The borough owners and the placemen and pensioners of the Irish House of Commons, with a few men who from disinterested motives dreaded reform, were on one side; the reformers, strongest, as in England, among the county members[3], were on the other. On a division Flood's third bill was rejected by one hundred and eleven votes to sixty[4]. To the end the movement for Parliamentary reform was met in the Irish House of Commons in the spirit of Rutland's letter to Pitt; and as long as the Irish Parliament survived, even in the brief period after the enfranchisement of the Catholics in 1793, Rutland's characterisation of it, as a system that did not bear the smallest resemblance to representation, continued to be true.

A Lull in the Reform Movement.

For the next five years neither Parliamentary reform nor the enfranchisement of the Catholics gave the Irish Government much concern. Grattan and the other reformers in the House of Commons during this period confined their agitation to the limitation of the number of office-holders and pensioners in the House and the

[1] *Parl. Hist.*, xxv. 469. [2] Cf. Omond, *Lord Advocates of Scotland*, II. 113.
[3] Cf. *Hist. MSS. Comm. 14th Rep.*, App., pt. I. 163.
[4] *H. of C. Journals*, XI. 437.

disfranchisement of revenue and customs officers. None of these reforms was carried during these years. But the discussions on them in the House of Commons are of interest to students of the Irish representative system and its working, if for no other reason than for the exceedingly frank way in which chief secretaries and other speakers on the Treasury Bench declared that places and pensions were a necessary part of the machinery by which the regal influence over the House of Commons was exercised.

Government Management of the House of Commons.

"What have I got to go to market with?" Beresford was asked by Eden, secretary to Lord Carlisle, when he arrived at the Castle in 1780, and was making his preparations for the opening of Parliament[1]. The answer to such a question can be learned from the recurring debates on place and pension bills. There was no pretence at disguise as to the use to which places and pensions were put. The attitude of the administration towards these reform bills until within a few years before the Union was: "We will not impair or diminish the resources of corruption, the sinews of the Irish administration, but transmit them to our successors in all their original vigour and efficacy[2]." These were not the words used by the speakers for the Government, year after year, in opposing place and pension bills; they are those of Mr Forbes who, in 1786, moved for leave to introduce a pension bill: but they correctly describe the attitude of the Government towards these measures in the period of comparative political calm between 1785 and 1790—in fact until the Government was again confronted with an agitation for a general reform of the representation and for the enfranchisement of the Catholics and was compelled to abandon the stand it had taken since 1785 against place and pension bills modelled after those long on the English statute books.

Concessions to the Catholics.

Even before the Irish Parliament had been freed from Poynings' law, there had been mitigations of the penal code against the Catholics. In 1772 there was an Act which enabled Catholics to recover money advanced on mortgage to Protestants. In this year also there was a bill intended to enable Catholics to take leases of small tracts of land for their cabins and potato patches. The bill failed, because the cry was raised that the Protestant interest was in danger[3]. But in 1778, when Buckinghamshire was Lord-Lieutenant, and was acting on his opinion that the existence of Ireland depended upon a satisfactory indulgence being given to the

[1] *Beresford Correspondence*, 150. [2] *Parl. Reg.*, VI. 286.
[3] Cf. *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 44.

Catholics[1], "the heads of a bill were, with little or no contest, allowed to be brought in for the relief of his Majesty's Catholic subjects in Ireland: and by this law Papists were enabled to take leases of land to any extent for nine hundred and ninety-nine years, every real advantage of property being hereby afforded them, the right of freehold only excepted." "This," adds Lord Charlemont, who was the author of the bill of 1772, "was indeed a momentous alteration, and a direct attack upon the very spirit of the Popery laws, and yet the same House of Commons which had so lately with contempt and indignation repeatedly refused the trifling concession above mentioned, granted this real and important boon with little debate, and the same House of Lords which had a few years before voted me out of the chair[2], which I had taken from motives of charity, now passed this bill with a minority of five peers present, or twelve including proxies[3]."

More respectful Treatment.

From 1778 the term Roman Catholic began to be substituted in the Journals[4] and the Acts for Papist, the term by which Catholics had hitherto been officially described in all legislation. But the new and more respectful term was not uniformly used from 1778. Occasionally the old word crept in again; and not until 1793, the year in which the Catholics were enfranchised, was the new name used in the speech from the throne[5].

Land Legislation in their Favour.

The argument in 1778 against granting Catholics the right to hold estates in fee was that with land so held they could influence county elections[6]. But in 1782 there was an Act permitting them to take and hold lands in the same manner as Protestants; safeguarded, however, by a clause excepting advowsons and manors or boroughs returning members to Parliament[7].

Discriminations against Catholics.

In this legislation of 1778 and 1782 precautions were taken to prevent the Catholics from obtaining any influence in Parliament; and all the Acts passed from 1772 for the relief of Catholics still left them under many disabilities beside those of being disqualified

[1] Buckinghamshire to Lord George Germaine. Dublin, June 3rd, 1778. Add. MSS. 34523, Folio 209.

[2] A method of defeating a bill which had passed second reading and had been sent to committee.

[3] *Hist. MSS. Comm. 12th Rep.*, App., pt. x. 44, 45.

[4] The first use of the new term I have discovered in the Journals was in 1778, when the relief bill of that year was before the House of Commons. *H. of C. Journals*, IX. 497.

[5] Lecky, VI. 561.

[6] *Parl. Reg.*, I. 148.

[7] 21, 22 Geo. III, c. 24.

from voting for members of the House of Commons, or sitting in Parliament. "Though they represented the immense majority of the people," writes Lecky, in describing the position of the Catholics about the time that the movement for their enfranchisement again began to give administrations in England and in Ireland serious concern, "they were wholly excluded from the executive; from the legislative; from the judicial powers of the State; from all rights of voting in Parliamentary and municipal elections; from all control over the national expenditure; from all share in the patronage of the Crown. They were marked out by the law as a distinct nation, to be maintained in separation from the Protestants, and in permanent subjection to them. Judged by the measure of its age, the Irish Parliament had shown great liberality during the last twenty years; but the injury and insult of disqualification still met the Catholic at every turn. From the whole of the great and lucrative profession of the law he was still absolutely excluded; and by the letter of the law the mere fact of a lawyer marrying a Catholic wife, and educating his children as Catholics, incapacitated him from pursuing his profession. Land and trade had been thrown open to Catholics almost without restriction, but the Catholic tenant still found himself at a frequent disadvantage because he had no vote and no influence with those who administered local justice, and the Catholic trader because he had no voice in the corporations of the towns. Catholics had begun to take a considerable place among the moneyed men of Ireland; but when the Bank of Ireland was founded in 1782 it was especially provided that no Catholic might be enrolled among its directors. Medicine was one of the few professions from which they had never been excluded, and some of them had risen to large practice in it; but even here they were subject to galling distinctions[1]."

Awakening of Political Thought.

Simultaneously with the changes in the law which were made between 1772 and 1782, and with the new importance of Catholics in the commercial world, constitutional changes in Ireland had quickened political activity, and made the possession of a vote more than ever desirable. The change from the old system of control by undertakers to the system under which the Lord-Lieutenant and his secretary managed the House of Commons; the Octennial Act; and the independence of the Irish Parliament—all these changes had added to the importance of the men who had votes or who could control votes. External influences were also at work stimu-

[1] Lecky, *England in the Eighteenth Century*, VI. 474, 475.

lating political life and thought. The influence of the American Revolution is obvious in the manifesto, issued by the second Dungannon Convention, calling the National Convention from which Flood's Reform Bill of 1783 emanated. The American struggle had made it a commonplace of politics that representation and taxation were inseparably connected[1]; and in the years immediately preceding the second movement for Parliamentary reform and the first considerable agitation for Catholic enfranchisement, "the French Revolution had persuaded multitudes that government is the inalienable right of the majority; and even among those who repudiated the principles of Rousseau and Paine, it had greatly raised the standard of political requirements, and increased the hostility to political inequalities and disqualifications[2]."

Renewal of the Catholic Agitation.

Although the agitation for the enfranchisement of the Catholics, which first took a popular form at the Dublin citizens' meeting and the abortive national convention of 1784, had subsided between the rejection of Flood's third Reform Bill in 1785 and 1790, the movement had not been entirely abandoned. The Catholic Committee, which was revived in 1783, had not been dissolved: and when the French Revolution again turned attention to the condition of the representation, and to the exclusion of the Catholics from any part in it, the Catholic Committee was reorganised, and in its new form was more than hitherto under the influence of the democratic party[3].

End of the Reform Movement.

Lord Buckinghamshire, on the death of Rutland in 1787, had become Lord Lieutenant: and in 1790, in the last Parliament of Buckinghamshire's administration, the agitation for the reduction of the number of placemen and pensioners in the House of Commons had been pushed with even more vigour than in preceding years. It was met with reiterated declarations from the Chancellor of the Exchequer that the Protestant interest in Ireland had received the most solid advantages from the influence of the Crown, and that the recent multiplication of offices due to the need of furnishing the secretary of the Lord Lieutenant with something with which to go to market, was a necessary consequence of Ireland's prosperity[4]; or by the assertion of the Prime Sergeant that he "could not conceive why three hundred persons, perhaps the very best qualified in the country for the faithful discharge of office, men who from the very circumstance of their being in Parliament were

[1] Cf. Lecky, vi. 474.
[2] Lecky, vi. 475.
[3] Cf. Lecky, vi. 472, 476.
[4] Cf. *Parl. Reg.*, x. 330.

always present to be responsible for their conduct, should be totally excluded from office[1]"; or again, by the statement that, as Ireland now had an Octennial Act, the constituencies could be left to deal with the men who were in office[2]. This argument was an insult to the intelligence of men like Grattan, Forbes, and Ponsonby, who knew as well as the men on the Treasury Bench, that of the one hundred and four office-holders and pensioners at this time of the House of Commons, few indeed had any constituents in the ordinary acceptance of the term.

Union of Parties.

The general election of 1790 helped to focus the movements for Parliamentary reform and Catholic emancipation. The volunteers of Belfast again became politically active; and unlike the agitation they had begun in 1783, the reform movement was not kept distinct from the agitation for Catholic enfranchisement. At the Dungannon Convention of 1783 a resolution of the Catholic volunteers of Dublin, asking the support of the reformers for Catholic enfranchisement, was ignored. In 1790 the resolutions of the Belfast volunteers demanded a reform of Parliament and of administration; and moreover urged Protestant dissenters to support by all their influence the enfranchisement of the Catholics, and to co-operate with the Catholics in agitating for Parliamentary reform and the abolition of tithes[3].

Three Opposition Parties.

There had now come about that union of parties which Rutland had so much dreaded when he was confronted with the movements for reform and Catholic emancipation in 1784 and 1785. "Parties in this country," he wrote to Lord Sydney, on the 13th of January, 1785, "consist of three different classes of men—the dissenters, who seek for such an alteration of the constitution as will throw more power into their hands for bringing the government nearer to that of a republic; the Roman Catholics, whose superior numbers would speedily give them the upper hand if they were admitted to a participation in the Legislature; and those who oppose government upon personal considerations. The first two are naturally jealous of each other from principle; and the third class is not upon any principle the friend of either. Without some bond of union, different parties will keep each other from encroaching upon the government; but once united they will become formidable[4]." "Such an union," Rutland added, "may occur on the present occasion." There was no union between the Protestant Parliamentary reformers

[1] Lecky, VI. 331.
[2] Lecky, VI. 332.
[3] Cf. Lecky, VI. 462.
[4] *Hist. MSS. Comm. 14th Rep.*, App., pt. I. 163.

and the advocates of Catholic enfranchisement during Rutland's administration; and to the absence of this union Wolfe Tone, who was in 1790 the foremost advocate of union between the Protestants and the Catholics, attributed the failure of the movement for reform begun in 1783.

Tone's Appeal for Harmony.

Tone emphasised this failure in a pamphlet which he published in September, 1790. He then urged that, so long as Protestants and Catholics stood politically apart, one intent only on Parliamentary reform and the other only on Catholic enfranchisement, it would be easy for the administration to defy them both. He argued that no danger would attend Catholic enfranchisement; and as an inducement to bring Protestants into a movement for reform and enfranchisement, he suggested the abandonment of the forty-shilling freehold qualification and the adoption of a ten-pound qualification for counties, similar to that which was established in 1829 when the forty-shilling freeholders were disfranchised. "Extend the franchise," Tone wrote, "to such Catholics only as have a freehold of ten pounds by the year; and on the other hand strike off the disgrace to our constitution and to our country, the wretched tribe of forty-shilling freeholders whom we see driven to their octennial market by their landlords, as much their property as the sheep or the bullocks which they brand with their name[1]." Ten thousand copies of Wolfe Tone's pamphlet were in circulation during the next twelve months[2]. Other literature in the same spirit was also widely read; and from the date of Wolfe Tone's pamphlet the revived movements for Parliamentary reform and Catholic emancipation began to give Lord Westmoreland, then Lord Lieutenant, as much uneasiness as the movements of 1784 and 1785 had given to Rutland.

The United Irishmen.

Wolfe Tone's activities were not confined to pamphleteering. In October, 1791, in association with Thomas Russell, an officer in the army, Tone reorganised the Society of United Irishmen at Belfast. It was constituted "for the purpose of forwarding a brotherhood of affection, a communion of rights, and a union of power among Irishmen of every religious persuasion, and thereby to obtain a complete reform in the legislature, founded on the principles of civil, political, and religious liberty[3]." From Belfast Tone returned to Dublin, where he organised another society of United Irishmen[4]. Napper Tandy, who had issued the

[1] Lecky, VI. 465.
[2] Cf. *Dict. Nat. Biog.*, LVII. 25.
[3] Plowden, III., App., 161.
[4] Cf. *Dict. Nat. Biog.*, LVII. 25.

call for the Dublin Convention of 1784, was secretary of the Dublin Society, and Simon Butler, a lawyer and a brother of Lord Mountgarret, was chairman. Tone also became associated with John Keogh: and in 1792 was appointed secretary of the Catholic Committee. In December, 1791, the Society of United Irishmen issued a manifesto of its principles and aims, appealing to the people of Ireland of all creeds to establish similar societies all over the country.

The *Northern Star*

From January 4th, 1792, the movement had the aid of the *Northern Star*, a bi-weekly newspaper published in Belfast. The object of the *Northern Star* was "to give a fair statement of all that passed in France, whither everyone turned their eyes: to inculcate the necessity of union among Irishmen of all religious persuasions; to support the emancipation of the Catholics; and eventually, as the necessary though not the avowed consequence of all this, to erect Ireland into a republic independent of England[1]." This newspaper, which between 1792 and 1797 gave the Government more trouble than any journal hitherto published in Ireland, soon had a wide circulation and much influence; and the popular agitation of the United Irishmen, as distinct from that of the Catholic Committee, was now on a larger scale than any agitation hitherto attempted.

Appeals to Government for Relief.

In 1790, before the movement had taken on this popular character, and while the Catholic Committee was still controlled by Catholic prelates and noblemen, the Committee had waited on Major Hobart, secretary to the Lord Lieutenant, requesting him to support in the House of Commons the petition to Parliament for Catholic relief. No specific requests were embodied in this petition; Parliament was merely asked to take the case of the Catholics into consideration. Hobart refused the request; and in the following session the Committee was unable to find a member to lay its petition before Parliament. In the beginning of 1791 a deputation went from the Catholic Committee to the Lord Lieutenant with a list of the penal laws which it desired should be modified or repealed. It was dismissed without even the courtesy of an answer[2]. Towards the end of 1791 Lord Kenmare and most of the Catholic gentry who were anxious to dissociate themselves from the movement for a union between the dissenters of the North of Ireland and the Catholics for the purpose of bringing about Parliamentary reform and Catholic enfranchisement, seceded

[1] *Dict. Nat. Biog.*, XL. 185.

[2] Cf. Lecky, VI. 472, 473.

from the Catholic Committee: and in December they waited on the Lord Lieutenant, with an address asking for the repeal of laws affecting Catholics, but leaving the extent of the relief wholly to the Legislature[1].

Catholic Committee Reorganised.

Keogh, a wealthy Dublin tradesman, who earlier in 1791 had been in England in the interest of the Catholic Committee, then became its leader, and it was at this stage of the movement, when the Catholic Committee had been reorganised after the secession and had been placed more completely under the influence of the democratic party[2], that Tone became its secretary[3]. Hitherto the Catholic Committee had contented itself with appeals to the Irish administration and less open appeals to the administration in England, made first through Keogh, and later, in 1791, through Richard Burke, whose father, Edmund Burke, now a supporter of the Pitt administration, had since 1765 been associated with the cause of Catholic relief. The reorganised Catholic Committee, however, despaired of help from the Irish administration: and after the session of 1792 had resulted only in a relief Act which did not affect the franchise, the Committee called a national convention which was held in Dublin in December, 1792, and from this convention, known in the history of the Catholic movement as the Back Lane Parliament, Keogh and four other delegates were sent to England with a petition to the King[4].

Pitt's Position in 1791.

And now again, in 1791–92 as in 1784–85, Pitt was in favour of concessions, while the Irish Government deemed them impossible. But there was an important difference between Pitt's attitude towards Lord Westmoreland's administration in regard to Catholic relief and the attitude which he had taken towards that of the Earl of Rutland in regard to Parliamentary reform. Pitt's position as regards Irish reform was due to his close connection with the reform movement in England. In his attitude towards Irish reform he stood alone. Sydney, who at that time was in charge of Irish affairs in Downing Street, did not sympathise with him in his appeals to Rutland. While Pitt was writing to Rutland, urging, almost pleading, for concessions, Sydney was writing to the Lord Lieutenant wishing Irish Parliamentary reform at the devil. When Pitt in 1791 pressed Westmoreland for concessions to the Irish Catholics, he had the thoroughgoing support of Dundas[5], who

[1] Cf. Lecky, VI. 473.
[2] Cf. Lecky, VI. 476.
[3] *Dict. Nat. Biog.*, LVII. 25.
[4] *Dict. Nat. Biog.*, XXXI. 33.
[5] Cf. Omond, *Lord Advocates of Scotland*, II. 91.

had succeeded to the office held by Sydney in 1785; and moreover, in 1791, the Parliament of Great Britain had made concessions to Catholics in England, one of which freed them from the double land-tax which they had been compelled to bear since 1692[1]. These concessions however stopped short of the repeal of the oaths which excluded Catholics from the franchise and from seats in Parliament.

Catholic Relief in England.

"It was a great boon to Catholics," writes the historian of Catholic emancipation in England, in describing the measure of relief of 1791. "It legalised the public worship of the Catholic Church. Schools could be opened. A priest could offer the holy sacrifice, and the faithful could assist at it without molestation and under the protection of the law[2]." Catholics in England had to wait until 1829 for a measure of relief as liberal as that which was soon to be passed by the Irish Parliament. The Act of 1791[3], only recently passed, at the time when Pitt and Dundas were urging on the Westmoreland administration a liberal policy towards the Catholics of Ireland, was, however, a very great step in advance[4].

Petition of the Catholic Committee.

While the Irish administration in 1790 and 1791 only rebuffed the Catholic petitioners, favourable answers were given to Keogh and to Richard Burke[5], who in 1791 urged the cause of the Catholic Committee before ministers in England. Richard Burke's instructions from the Catholic Committee were to ask that Catholics might be admitted to all departments of the law, to the magistracy, and to the minor offices of county administration; that they might be entitled to serve in all cases both on grand and petty juries; and that they might obtain the elective franchise, but only in the counties[6].

Views of Ministers in London and Dublin.

The result of the interviews between Richard Burke and Dundas was that Burke reported to the Catholic Committee that ministers in England were convinced of the necessity of granting some measure of relief to the Irish Catholics. With these interviews between Burke and Dundas, there began the letters, written from London

[1] "It is clear that the lands of Roman Catholics were, by reason of the Act in question (1692), charged with an assessment double in amount as compared with the assessment charged upon lands that were owned by persons of the Protestant persuasion." *Report from Select Committee on the Land Tax as affecting Roman Catholics*, July 18, 1828.

[2] Amherst, *Hist. of Catholic Emancipation*, I. 186.

[3] 31 Geo. III, c. 22. Eng. Statutes.

[4] Cf. Amherst, I. 186.

[5] Cf. *Dict. Nat. Biog.*, xxxi. 33; Lecky, VI. 483.

[6] Lecky, VI. 483.

by Pitt and Dundas, and from Dublin by Westmoreland and Major Hobart, which show the opposition between the views of ministers in London and those of the Irish administration, an opposition as marked as between the views of Pitt and Rutland on the question of reform in 1784 and 1785. The correspondence is given at length by Lecky from the letters in the Irish State Paper Office[1]. It shows that both Pitt and Dundas were of opinion that the franchise should be conceded to the Catholics in Ireland, and that ministers in London held that English public opinion would not justify the application of English resources for the purpose of keeping the Irish Catholics in a continued state of political proscription. Westmoreland's answer to these communications from London was that the concession of the franchise to the Catholics was impossible. "I am convinced," he wrote to Pitt, on January 18th, 1792, "you might as well attempt to carry in the English Parliament the abolition of negro slavery, a reform of representation, or an abolition of the House of Lords in the House of Lords, as to carry the Irish Parliament a step towards the franchise." Hobart, the chief secretary, and Cooke, the under-secretary, supported this view; and Hobart and Sir John Parnell, the Chancellor of the Exchequer in Ireland, strongly urged it in interviews in London with Pitt and Dundas.

Aims of the Catholic Committee.

The English ministers gave way, and in the session of the Irish Parliament of 1792 there was no Government measure for the relief of Catholics. A relief bill was, however, introduced by Sir Hercules Langrishe, a private member; and in view of the introduction of Langrishe's bill, and the popular feeling that the Catholic Committee was agitating for unlimited and total emancipation, the Committee published a restatement of the changes in the law for which it was working. These were the same as Richard Burke had laid before Dundas in London, except that the objects of the Committee as to the franchise are more fully stated than in the summary of Richard Burke's instructions which I have taken from Mr Lecky. The resolutions of the Catholic Committee of February 4th, 1792, asked for "the right of voting in counties only for Protestant members of Parliament, in such a manner, however, as that a Roman Catholic freeholder should not vote, unless he either rented and cultivated a farm of twenty pounds per annum in addition to his forty-shilling freehold, or else possessed a freehold of twenty pounds a year[2]."

[1] Cf. Lecky, VI. 434–503.

[2] Cloncurry, *Personal Recollections*, 34.

The Subject before Parliament in 1792.

Sir Hercules Langrishe's bill was seconded by Hobart, who made no speech in doing so. With the Government thus on its side the bill passed. It opened the profession of the law to Catholics; repealed the law directed against the intermarriage of Catholics and Protestants; and removed other minor disabilities, but ignored the appeal of the Catholic Committee as to the county magistracy, juries, and the Parliamentary franchise. While the bill was pending in the House of Commons several petitions were presented in favour of Catholic enfranchisement. One was from the Catholics of Belfast, and prayed the Legislature to repeal all penal and restrictive laws, and to put Catholics on the same footing as their Protestant fellow-subjects[1]. Another was from a group of Catholic commercial men in Dublin. It urged that a restoration of the Catholics to some share in the elective franchise, which they had enjoyed until long after the Revolution, would not only strengthen the Protestant state, but add new vigour to industry, and afford protection and happiness to the Catholics of Ireland[2]. There was also a petition from the Catholic Committee, presented on the 18th of February, the day that the House of Commons went into committee on Sir Hercules Langrishe's bill. It asked the removal of certain restraints and disabilities with which his Majesty's subjects professing the Popish religion were burdened[3]. In this petition the Catholic Committee referred with confidence to the conduct of the Catholics of Ireland for a century past, to "prove their uniform loyalty and submission to the laws, and to corroborate their solemn declaration" that if they obtained "from the justice and benignity of Parliament such relaxation from certain incapacities, and a participation in the franchise which would raise them to the rank of freemen, their gratitude must be proportioned to the benefit, and that, enjoying some share in the happy constitution of Ireland, they would exert themselves with additional zeal in its conservation."

Petitions Rejected.

There had been much objection to the acceptance of petitions for Catholic enfranchisement presented to the House in this session, but so far none of them had been rejected. The petition of the Catholic Committee, however, was rejected by a vote of two hundred and eight to twenty-five[4]. On the same day a petition from the United Irishmen of Belfast was rejected by an even larger majority; both these votes being evidently given with the intention of

[1] Plowden, iv. 26.
[2] *H. of C. Journals*, xv. 55.
[3] *H. of C. Journals*, xv. 56.
[4] *H. of C. Journals*, xv. 57.

demonstrating to the organisations outside Parliament which were agitating for Catholic enfranchisement, that the Langrishe Act was as far as the Government intended to go in the direction of Catholic relief.

Catholic Committee not Discouraged.

Neither the ignoring of the appeal for the franchise nor the rejection of the petition discouraged the Catholic Committee, which was keeping its movement apart from that for Parliamentary reform, and also distinct from the more revolutionary movement of the United Irishmen. The Committee knew the position of the administration in England. That had been brought out in the debates on Sir Hercules Langrishe's bill and on the petitions, when supporters of the Irish administration had declared in the House of Commons that the Langrishe bill had been dictated by ministers in England, had asked if further concessions were to be made to Catholics, and had even suggested that, in the preamble to the Langrishe bill, there should be a clause declaring against all further concessions[1]. Immediately after the passing of the Langrishe bill the Catholic Committee renewed the agitation with a view to another bill in the next session of Parliament, and now took steps to give a more national character to the movement for enfranchisement.

Its Disavowal.

On the 17th of March, 1792, the Committee issued a declaration of the Catholics in Ireland repudiating and utterly denying the existence of certain opinions and principles inimical to good order and government, popularly attributed to Catholics. The preamble of the declaration set forth that it was peculiarly necessary at that time to remove such imputations, and "to give the most full and ample satisfaction to our Protestant brethren that we hold no principle whatsoever incompatible with our duty as men or subjects, or repugnant to liberty, whether political, civil or religious[2]." In this declaration the Catholics explained their position toward the Pope; disclaimed and for ever renounced all interest in and title to all forfeited lands resulting from any right or supposed rights of their ancestors; and finally affirmed that Catholics had no wish to subvert the existing Church establishment in Ireland. "It has been objected to us," reads the declaration, "that we wish to subvert the present Church establishment for the purpose of substituting a Catholic establishment in its stead. Now we do hereby disclaim, disavow, and solemnly abjure any such intention; and further if we shall be admitted into any share in the constitution by our

[1] Plowden, iv. 36. [2] Plowden, iv., App., 7, 8.

being restored to the right of the elective franchise, we are ready in the most solemn manner to declare that we will not exercise that privilege to disturb and weaken the establishment of the Protestant religion or the Protestant government of this country."

A Call for another Convention.

The declaration of March 17th was followed by a call from the Catholic Committee for a Convention of Catholic country gentlemen, "to assist by their advice and influence the measures adopted by the Committee to procure for the Catholics the elective franchise, and an equal participation in the benefits of trial by jury[1]." Remembering the ill-success of the Convention of 1784, due to the attempt to convene it by methods which gave the Government an opportunity of interposing, the Catholic Committee in 1792 sent, with the call, instructions as to the way in which delegates were to be chosen. There was to be no attempt, as in 1784, to imitate the House of Commons either in numbers or in the mode of election. It was admitted also by the Committee that it would be imprudent to call meetings of all the Catholics of a county: and it was therefore suggested that "one or two of the most respectable persons in each parish be appointed electors at a meeting to be held at such private house in the parish as may be most convenient to the inhabitants." These several electors were to meet at any central place in the county for the purpose of choosing from one to four of their own residents as delegates to the general committee. No one was to be eligible as a delegate who should not solemnly promise to attend in Dublin when required to do so by order of the Catholic Committee. It was also suggested that in addition to the resident delegates, each county should appoint, as associate delegates, one or two resident inhabitants of Dublin, whose business it should be to keep up a regular correspondence with their colleagues in the county, and to inform the county through them of all proceedings in the general committee at such times as the county delegates should be absent. The object of the Catholic Committee was to secure a convention representing Roman Catholics of the landed class, and to give the movement for enfranchisement a wider basis than had hitherto been possible when most of the members of the Committee had been residents of Dublin.

The Counter-Movement.

The effort on the part of the Catholic Committee to give a more national character to its agitation led to a counter-movement, largely inspired by the Irish Government. In England at this time, whenever the Government desired an endorsement of its

[1] Plowden, iv., App., 10.

action, or any expressions of opinion in its favour at a crisis, the grand juries at the assizes and the corporations in the boroughs were approached, and addresses to the Crown soon poured in. The same methods were adopted in Ireland when it was realized that the movement for Catholic enfranchisement was to be extended. The letter from the Catholic Committee to the Catholic landed gentry, appealing to them to associate themselves with the Committee, was made the occasion of addresses from grand juries. These addresses were usually framed in exaggerated and alarming language, as though "the Catholics of Ireland were on the eve of a general insurrection, ready to hurl the king from his throne and tear the whole frame of the constitution to pieces[1]." The grand juries of Leitrim, Cork, Sligo, Fermanagh, Derry, Donegal, and Louth, as well as the corporation of Dublin, took part in this counter-movement, and expressed their abhorrence of the step the Catholic Committee was taking in the movement for enfranchisement.

Address from a Grand Jury.

One of the addresses—that from the grand jury of Louth—will serve to show their general tenour, and the spirit in which the representatives of the ascendancy party went into the counter-movement. Foster, the Speaker of the House of Commons, who in the next session from the floor of the House strenuously opposed Catholic enfranchisement when the Relief bill was in committee, was chairman of the Louth grand jury. In their address the jurors declared "that the allowing to Roman Catholics the right of voting for members to serve in Parliament, or admitting them to any participation in the government of the kingdom, was incompatible with the safety of the Protestant establishment, the continuance of the succession to the Crown in the illustrious House of Hanover, and finally tended to shake, if not to destroy, their connection with Great Britain, on the continuance and inseparability of which depended the happiness and prosperity of that kingdom; that they would oppose every attempt towards such a dangerous innovation, and that they would support with their lives and fortunes the present constitution and the settlement of the Throne on his Majesty's Protestant house[2]."

Conciliatory Grand Juries.

Not all the grand juries were of the counter-movement. While fifteen of them joined in the protest against the new movement of the Catholic Committee, there were several which refused to do so. In Mayo ten dissentient jurors protested against the resolution of the majority; and other grand juries contented themselves with

[1] Plowden, iv. 38. [2] Plowden, iv. 39, 40.

describing the approaching Convention as inexpedient, while showing a spirit of conciliation towards the Catholics[1].

Castle Opinion of the Catholics.

From the time of the volunteer movement the Irish administration had turned the newspaper press to account. The administration journals were at this time subsidised by liberal payments for the publication of proclamations and official advertisements. After the Catholic Committee began its new campaign in March, 1792, newspapers and publications, subsidised by the Castle, were filled with the vilest scurrility against the Catholics. The Castle opinion of Catholics is illustrated by a letter written by Beresford, who at this time was a commissioner of customs, and who, as far back as 1780, was, as Lord Buckinghamshire wrote to his friend Sir Charles Thompson, "basking in the sunshine of the Cabinet[2]." Beresford had long been one of the most prominent and powerful of the permanent officials, and belonged to a family possessed of large borough interest, a family whose members and connections for a generation monopolised one-fourth of the best-paid official positions in Ireland[3]. "The ministers of England," he wrote to Lord Auckland, five years after the enfranchisement of the Catholics, "are extremely ignorant of the situation, nature, and disposition of the people of Ireland. To enter properly into that subject and minutely would require a quarto volume; but be assured that the whole body of the lower order of Roman Catholics of this country are totally inimical to the English Government: that they are under the influence of the lowest and worst class of their priesthood; that all the extravagant and horrid tenets of that religion are as deeply engraven in their hearts as they were a century ago, or three centuries ago: and that they are as barbarous, ignorant and ferocious as they were then[4]."

Apprehensions of the Result of any Concession.

The spirit of the counter-movement of 1792 was that of Beresford's letter; and to checkmate the movement for Catholic enfranchisement it was sought to make the dividing line between Catholics and Protestants more marked than at any time since the enactment of the penal code. When it is remembered that all that the Catholic Committee asked was that Catholics in counties should be enabled to vote for Protestant candidates, and that they were willing to accept a restriction of the county franchise to Catholics possessing a much larger qualification than the forty-

[1] Cf. Lecky, VI. 507.
[2] Add. MSS. 34523, Folio 297.
[3] Plunket, *Life and Speeches of Lord Plunket*, I. 109.
[4] *Beresford Correspondence*, II. 159.

shilling freehold, it seems remarkable that the claims of the Catholics should have so disturbed the Irish Government and the political interests by which it was supported. Had the Catholics been put in a position to elect the whole of the sixty-four members from the counties, the boroughs with their two hundred and thirty-six representatives in the House of Commons would still have remained in the possession of the Protestants, as they did after the enfranchisement of the Catholics in 1793 until the Union. But while the Catholic Committee sought to keep its movement apart from the movement for Parliamentary reform, the United Irishmen and the dissenters in Ulster were agitating for both Catholic enfranchisement and Parliamentary reform; and it was realized by the borough-owning interests, which had been so long the mainstay of Irish administrations, that any concession to the Catholics, however small and well safeguarded, must be the beginning of the end of the non-representative system on which more than two-thirds of the members of the Irish House of Commons were elected. For that reason the counter-movement was directed from Dublin Castle chiefly against the Catholic Committee, and its plan for a convention and a petition to the Crown. The opinion of Westmoreland, the Lord Lieutenant, and of those nearest to him, was that every concession made to the Catholics on the application of the Catholic Committee would increase its power with the electors, and "would eventually produce a total reform of the present Parliament." "It was," wrote Westmoreland to Dundas in 1792, at the time when the grand juries at the summer assizes were denouncing the Committee and the Convention, "a deep laid scheme not only against the religious establishment, but against the political frame of the Irish Government, which England has, with very little variation and exception, managed to her own purpose[1]."

The counter-movement had one effect on the Catholic Committee. It led the Committee to ascertain whether it was legally in the right in calling the Convention. The circular which had been sent out was submitted to two Protestant lawyers, Simon Butler and Beresford Burston, "gentlemen of the first eminence in the profession, who had the honour to be of his Majesty's council[2]." These lawyers were asked, "Is a meeting for the purpose of choosing such delegates an unlawful assembly; and if not an unlawful assembly, has any magistrate or other person, by or under the pretence of the Riot Act or any other and what statute, a right

The Legality of the Convention.

[1] Lecky, VI. 535.

[2] Plowden, IV. 46.

to disperse said meeting[1]?" Butler answered that he was "clearly and decidedly of opinion that a peaceful meeting for the purpose of choosing such delegates is a lawful assembly, and that no magistrate or other person has a right to disperse such meeting." "I feel no difficulty," added Butler, in reference to the allegations in the addresses of the grand juries that the call for the Convention was illegal, "in declaring my opinion that publications charging the General Committee with exciting, in the instance before us, unlawful assemblies for seditious purposes are libels, and as such are indictable and actionable[2]." Burston's opinion concurred with that of Butler. These opinions were published in September; and the election of delegates to the Convention proceeded. The agitation of the Catholic Committee was among the more wealthy and better educated of the Catholic population; and it was greatly helped, between the rejection of the Catholic petitions in the Parliamentary session of 1792 and December when the Convention was held, by the publication of Butler's *Digest of the Popery Laws*. Butler was not of the Catholic Committee; but the Committee was instrumental in the publication of his book[3], which made a great impression in favour of the Catholics.

Character of the Convention.

By October twenty-two Irish counties and most of the cities had elected delegates to the Dublin Convention in the way recommended by the Catholic Committee. The other counties had all done so, but in a less regular way. The delegates were instructed to maintain a guarded language, but to petition for the elective franchise and trial by jury[4]. The Convention met on December 3, 1792. Delegates were present from the thirty-two counties, and from forty-two cities and boroughs. Irrespective of the Catholic bishops, there were two hundred and thirty-one delegates[5]. The delegates wore no uniform nor arms. There was no aping of Parliament, nor any of the bombast and theatricality which had made the National Convention of 1783 ridiculous, and had discredited the moderate reform bill which had emanated from it. "It was all quiet, business-like, matter-of-fact; no display; little expenditure of art. Everything for an express and intelligible purpose[6]." Although attempts were made to throw ridicule on the Convention, and from its place of meeting it was contemptuously

[1] Plowden, IV., App., 33.
[2] Plowden, IV., App., 33, 34.
[3] *Dict. Nat. Biog.*, VIII. 77.
[4] Lecky, VI. 526.
[5] Cf. Plowden, IV., App., 46–50.
[6] Wyse, *Hist. Sketch of the Late Catholic Association of Ireland*, I. 126.

dubbed the Back-Lane Parliament, no political convention held in Ireland during the lifetime of the Irish Parliament ever reached a higher level of seriousness and dignity.

Its Moderation.

The moderation of the Convention was a disappointment to the Irish administration, for it falsified the abuse which had been heaped on the Catholic Committee by the grand juries and the administration press. The United Irishmen sought to associate themselves with the Convention. But, consistent with the policy of the Catholic Committee in keeping the movement apart from that for Parliamentary reform, and also apart from the much more revolutionary agitation in which the United Irishmen were engaged, the Catholic Convention refused to receive a deputation from them[1]. From the rejection of the Catholic petition by the House of Commons in February, 1792, to the end of the agitation for Catholic enfranchisement, the Committee carried on its campaign with a caution and a moderation which stand out in the history of reform movements in both England and Ireland; and with so much tact and circumspection that, to the chagrin of the administration, a loophole was never afforded for Government interference. The principal object of the Convention was the petition to the Crown; and the Lord Lieutenant "was obliged reluctantly to confess that, if it confined itself to petitioning, he knew no existing law by which it could be suppressed[2]."

It gains Adherents.

Moderation and tactful management did more for the Catholic Committee than to safeguard the Convention from interference by the Government. It brought back into the movement several of the seceders of 1790[3], and secured to the Committee the co-operation of some of the Catholic bishops and the neutrality of the others[4].

Its Petition to the King.

In the call for the Convention it had been proclaimed that its first business would be "an humble application to our gracious sovereign, submitting to him our loyalty and attachment, our obedience to the laws, a true statement of our situation, and of the laws which operate against us; and humbly beseeching him that we may be restored to the elective franchise, and an equal participation in the benefits of trial by jury[5]." A petition on these lines was framed by the Convention. It was signed by Dr Troy,

[1] Cf. Lecky, VI. 548.

[2] Lecky, VI. 526.

[3] Cf. Plowden, IV. 51.

[4] Cf. O'Brien, *Autobiography of Theobald Wolfe Tone*, I. 86, 87; Lecky, VI. 576.

[5] Plowden, IV., App., 12.

Catholic Archbishop of Dublin, and Dr Molan, Catholic Bishop of Cork, for themselves and the Catholic prelates and clergy of Ireland, and by two hundred and thirty-one delegates[1].

The Plea for Enfranchisement.

"There remains one incapacity," reads the clause in this petition which dealt with the exclusion of the Catholics from the franchise, "which your loyal subjects, the Catholics of Ireland, feel with most poignant anguish of mind, as being the badge of unmerited disgrace and ignominy. We are deprived of the elective franchise to the manifest perversion of the spirit of the constitution, inasmuch as your faithful subjects are thereby taxed, where they are not represented actually or virtually, and bound by laws in the framing of which they have no power to give or withhold their assent. And we most humbly implore your Majesty to believe that this our prime and heavy grievance is not an evil merely speculative, but is attended with great distress to all ranks, and in many instances with the total ruin and destruction of the lower orders of your Majesty's faithful and loyal subjects, the Catholics of Ireland; for may it please your Majesty, not to mention the infinite variety of advantages in point of protection and otherwise, which the enjoyment of the elective franchise gives to those who possess it, nor the consequent inconveniences to which those who are deprived thereof are liable; not to mention the disgrace to three-fourths of your loyal subjects of living, the only body of men incapable of the franchise, in a nation possessing a free constitution, it continually happens, and of necessity from the malignant nature of the law must happen, that multitudes of the Catholic tenantry in divers counties in this kingdom are at the expiration of their leases expelled from their tenements and farms to make room for Protestant freeholders, who by their votes may contribute to the weight and importance of their landlords, a circumstance which renders the recurrence of a general election, that period which is the boast and laudable triumph of our Protestant brethren, a visitation and a heavy curse to us, your Majesty's dutiful and loyal subjects[2]."

The Presentation of the Petition.

The petition having been agreed upon and signed, the important question arose as to the mode of presenting it to his Majesty. From the inception of the movement for the Catholic Convention it had been determined to appeal directly to the king. Tone has left an explanation of why the Catholic Committee came to this determination. "The usual method had been," he writes, "to deliver all former addresses to the Lord Lieutenant, who transmitted

[1] Plowden, iv., App., 46–50.

[2] Plowden, iv., App., 44, 45.

them to the king; and certainly to break through a custom invariably continued from the first establishment of the General Committee was marking in the most decided manner that the Catholics had lost all confidence in the administration of this country. But strong as this measure was, it was now to be tried[1]." There was some opposition to "a blow of this nature, striking so directly at the character and almost at the existence of the administration." "It was suggested rather than argued," continues Tone, "that it was not perhaps respectful even to Majesty itself, to pass over with such marked contempt his representative in Ireland, and the usual mode was the most constitutional or at least the most conciliatory. But the spirit of the meeting was now above stooping to conciliate the favour of those whom they neither respected nor feared.... The question on the original motion was at length unanimously decided in the affirmative. By passing over the administration of their country, in a studied and deliberate manner and on solemn debate, the General Committee published to all the world that his Majesty's ministers in Ireland had so far lost the confidence of no less than three million of his subjects, that they were not even to be entrusted with the delivery of their petition. A stigma more severe it has not been the fortune of many administrations to receive[2]."

Popular Acclamation.

Five delegates—Sir Thomas French, Mr Edward Byrne, Mr John Keogh, Mr James Edward Devereux, and Mr Christopher Dillon Bellew—were chosen by the Convention to carry the address to the king. "These gentlemen," writes Plowden, "went by short seas. In their road to Donaghadee they passed through Belfast in the morning, and some of the most respectable of the inhabitants waited on them at the Donegal Arms, where they remained about two hours. Upon their departure the populace took their horses from their carriages, and dragged them through the town, amidst the liveliest shouts of joy and wishes for their success. The delegates returned these expressions of affection and sympathy by the most grateful acknowledgements and assurances of their determination to maintain that union which formed the strength of Ireland[3]."

Reception by the King.

The audience with the king was on the 2nd of January, 1793. Dundas, Secretary for the Home Department, who, a year earlier,

[1] O'Brien, *Autobiography of Theobald Wolfe Tone*, I. 164.

[2] O'Brien, *Autobiography of Theobald Wolfe Tone*, I. 165–167.

[3] Plowden, IV. 51.

had been urging enfranchisement on Westmoreland, introduced the delegates to George III. "His Majesty," writes Tone, "was pleased to say a few words to each of the delegates in turn. In these colloquies the matter is generally of little interest; the manner is all; and with the manner of the sovereign the delegates had every reason to be content. Thus had the Catholics at length through innumerable difficulties fought their way to the foot of the throne; the king had in the most solemn manner received their petition, and his ministers were in full possession of their situation, their wants, and their wishes[1]." The biographer of Keogh, a much more recent historian of the Convention, states that the deputation was favourably received, and the direct consequence of it was the Relief Act of 1793[2]. It is exceedingly improbable that a specific promise was given to the delegation; but the Catholic Convention knew, and so did the Lord Lieutenant, that when it sent its petition to England a favourable reception was much more probable than had it been presented at the Castle. "The Catholics," wrote Westmoreland, while the Convention was still in session, and on the very day that it was decided to send the petition direct to the king, "are persuaded that the English Government wish them better than the Irish. They have brought the point to an issue[3]."

A Reason for English Complaisance.

Two weeks before the Catholic deputation was introduced by Dundas to the king, Dundas had reminded Westmoreland that England was on the eve of war with France, a war which would tax all the resources of the empire. He had counselled the Lord Lieutenant to hold language of conciliation towards the Catholics, and announced his positive conviction that it was for the interest of the Protestants of Ireland, as well as of the empire at large, that the Catholics, if peaceable and loyal, should obtain participation on the same terms with Protestants in the elective franchise and the formation of juries[4].

Unrest in Ireland.

Between the meeting of the Catholic Convention and the presentation of its petition events in Ireland were adding to the embarrassments of the administration. Hitherto the Irish Whigs, with whom Charlemont acted, had refused to associate themselves with the movement for Catholic enfranchisement. In December, 1792, there was formed a new association, with the Duke of Leinster as president, called the Friends of the Con-

[1] O'Brien, *Autobiography of Theobald Wolfe Tone*, I. 173.
[2] Cf. *Dict. Nat. Biog.*, XXXI. 33.
[3] Lecky, VI. 546.
[4] Cf. Lecky, VI. 556.

stitution[1]. The members of this new organisation seem to have been identified with neither the Catholic Committee nor the United Irishmen. Grattan was one of the leaders, and the foremost object of the movement was an effectual reform of the representation of the people, including persons of every religious persuasion[2]. New life also was being infused into the volunteer movement[3], which now more than ever was influenced by the French Revolutionary spirit; and on December 9th the national guard, with the volunteer companies of Dublin, met to celebrate the triumph of liberty in France. Disaffection was daily increasing. Seditious newspapers and broadsides were in circulation, and seditious ballads were sung in the streets. Seditious cries were heard in the theatre, and attempts were being made to seduce soldiers from their allegiance. United Irishmen were in correspondence with France: and the Irish Government had been warned that no more troops could be spared from England[4].

No Support from England.

On the 10th of December Westmoreland reported to Pitt that the reform spirit had spread surprisingly within the last fortnight; and from this date the Lord Lieutenant's letters hint at concession to the Catholics. But the suggestion was clearly a disagreeable one to Westmoreland, only to be acted upon as a last resort; and he was confident that there would be no need for concession if the administration in England would make it clear that it stood by the Irish administration. "A big word from England, of her determination to support the Protestant establishment," Westmoreland wrote to Dundas on December 11th, "would set everything right[5]." This word never came. Pitt did not recede from the position he had taken before the Catholic Convention met, when he assured Westmoreland that if the Protestants of Ireland relied on the weight of England being employed "to enforce the principle that in no case anything more is to be conceded to peaceable and constitutional applications from the Catholics, that reliance would, he thought, fail." "I fairly own," Pitt added, "that in the present state of the world, I think such a system cannot ultimately succeed[6]." Westmoreland's appeal for a big word was made a month later than the date of this letter of Pitt's. The end of the struggle was in sight when, apparently in response to

[1] Cf. Lecky, vi. 539.
[2] Cf. Lecky, vi. 552.
[3] Cf. O'Brien, *Autobiography of Theobald Wolfe Tone*, i. 154. 155.
[4] Cf. Lecky, vi. 547.
[5] Lecky, vi. 549.
[6] Lecky, vi. 555.